

**OVERSIGHT OF SOCIAL SECURITY CONTINUING
REVIEWS: EFFECT AND IMPACT ON ADMINISTRATIVE
LAW JUDGES AND INDIVIDUAL BENEFICIARIES**

**HEARING
BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES
OF THE
COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

NINETY-EIGHTH CONGRESS

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OVERSIGHT OF SOCIAL SECURITY CONTINUING REVIEWS: EFFECT AND IMPACT ON ADMINISTRATIVE LAW JUDGES AND INDIVIDUAL BENEFICIARIES

SATURDAY, OCTOBER 8, 1983

U.S. SENATE,
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE, AND GENERAL SERVICES,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in the PERA Building, second floor, Santa Fe, NM, Hon. Jeff Bingaman presiding.
Present: Senator Bingaman.

OPENING STATEMENT OF SENATOR BINGAMAN

Senator BINGAMAN. OK. Let's go ahead with this hearing. First, let me announce what we are doing. The Senate Committee on Governmental Affairs, Subcommittee on Civil Service, Post Office, and General Services, is having an oversight hearing on the continuing reviews that apply to Social Security disability benefits. In particular, we're looking at the effect and the impact of these reviews on administrative law judges and individual beneficiaries.

I need to, at the first, indicate that I appreciate the willingness of Senator Ted Stevens, who is chairman of the subcommittee, and of Senator William Roth, who is chairman of the Governmental Affairs Committee, for authorizing me to have these hearings as official hearings of the Senate Committee on Governmental Affairs here in Santa Fe.

Let me also just start and thank the various members of my staff who have worked to organize these and to notify people that we would be holding these hearings. Ed Jayne, who is the head of the minority staff on the subcommittee, has done a great deal of work on this and is very knowledgeable in the general area, and I appreciate all of his work on it.

Here in the State, Becky Bustamante and Dolores Garcia in our Santa Fe office; Liz Gallegos and Gloria Cox in our Albuquerque office; Sal Fresquez, in particular, in our Las Cruces office; and Lynn Ditto in our Roswell office have all worked extensively in making these arrangements, and I appreciate their hard work.

For the past 2 years, the Members of Congress and the American people have, together, been reading almost on a daily basis about instances of termination of disability benefits for individuals who, in fact, were still fairly clearly disabled. Many of these people have had

great hardship in facing the review process which has been imposed, and, in fact, in losing their only real source of income.

There have been other examples which have gotten wide publicity, where individuals have been terminated from benefits on the basis that they were no longer disabled and have died from the same illness shortly thereafter.

Nearly all of these terminations have resulted in needless pain and suffering and loss of income for thousands of disabled individuals. The problems associated with the review of Social Security disability annuitants have had a severe impact on hundreds of thousands of individuals in the country, and a great many here in New Mexico.

Between the period of March 1981 and September 1982, there were 676,000 reviews conducted nationwide. During that same period, 4,595 reviews were undertaken in New Mexico, and of those, 1,773 were continued, and 2,331 annuitants were terminated.

The rate of denial in New Mexico was 50 percent, as compared to a national average of about 45 percent. Although the rate of denial may have improved somewhat in the last few months, clearly, the disruption and problems that it's caused continue.

I just want to say that one reason that I'm having this hearing is that in the four offices that we have here in New Mexico, the largest number of cases that have been brought to our attention where people have come in to us and asked for our help or our intervention on their behalf with the Federal Government have been in these Social Security disability cases. We've had a tremendous number of people around the State who have contacted us, and many of them have had very legitimate concerns about the case that they were involved in.

The flood of terminations that's resulted stems largely from two factors: One was the act of Congress which is referred to as the Bellmon amendment, which mandated in 1980 that disability recipients be reviewed every 3 years to determine if they're still eligible for benefits. These reviews are called continuing disability investigations, or CDI's, and they were scheduled by Congress to begin in January 1982.

The second factor behind the great number of terminations was the administration's—the Reagan administration's decision to accelerate the implementation date to March 1981. In fiscal 1982, some 496,000 disability recipients, or almost 18 percent of the total, found their cases under review, and some 340,000 individuals have been taken off the rolls since March 1981 when the Reagan administration began its review program.

Nobody can deny the need to have periodic reviews to ensure that only those who are actually disabled are permitted to continue to receive disability benefits, but the manner in which the reviews are conducted needs to be sensitive to the hardships which those reviews can cause. And the review process needs to be safeguarded from insensitivity, inefficiency, and blatant abuses.

Because of the abrupt acceleration of reviews, many individual cases received only the most cursory examinations. State disability determination offices were forced to accept a threefold increase in their workload, without an increase in funding or support. Many reviews were accomplished simply on paper, without ever seeing another human being or with a 5-minute examination by a physician who had never seen the recipient before.

And often the statements of personal physicians have either never been sought or simply disregarded. Most reviews centered on a profile of disabled persons who were thought most likely to be able to go back to work. Several days of hearings before the Senate Committee on Aging and the Senate Committee on Governmental Affairs and other groups have documented a pattern of improper denials of disability benefits to individuals, particularly those who suffer from psychiatric problems.

Despite the seriousness of these problems, congressional action in this area has been slow. Congress acted last year to temporarily continue disability benefits through the appeals process for those beneficiaries who chose to contest their notices of termination. This continuation expired on September 30, but a further temporary continuation which I cosponsored has been added to a bill which was acted on this last Thursday, and I believe the temporary extension there was a 60-day extension.

The temporary measures were intended to prevent further hardship until some more permanent solution can be considered, and such a permanent solution is being worked on by Congress at this time, and I'm hopeful that prior to Christmas or prior to the recess of the Congress at Christmas this matter can be permanently dealt with.

I welcome the reforms that have been proposed, but they should have been implemented a year ago when we already had full knowledge of the tragic consequences of the review process. The most important reform favored by many Senators for the past years is still missing, and that is that disability benefits should not be cut off unless the beneficiary's medical condition has improved.

It's inherently unfair, in my view, to continually subject recipients to new standards years after their condition was considered disabling. The administration's proposed revisions of the disability review process are somewhat incomplete as yet, and in my view, they're late. Nonetheless, there has been an important step in the right direction. I hope the administration will make every effort to follow through and build on the reforms that it itself has proposed.

I'm hopeful that in the course of this hearing we can shed some light on these problems and we can, hopefully, come up with some specific solutions which can be incorporated into the corrective legislation that the Congress is now considering.

At this point, what I'd like to do, just to provide some context for what we're doing, is to go ahead and play some excerpts from a videotape that was prepared. This is a documentary that was shown in June, and it was produced by educational television out of Boston; it was aired on the program Frontline, which Jessica Savitch hosts. What we've done is to excerpt about 15 minutes from that program to indicate the nature of the problems that have been identified in this area.

I thought before we get into actual testimony and recognition of some of the people here, we should go ahead with this. So if you'll all just bear with us, we'll watch this first.

[Whereupon, the videotape was played.]

Senator BINGAMAN. OK. Let me just say that that was about a 15-minute excerpt from the entire program, which we're going to show at 12:30 here for any of you that are interested in seeing the rest of it.

The schedule we're going to follow today is that we'll go ahead and take testimony until about noon, and at 12 o'clock we'll break for lunch, and the hearing will start again at 1:30, but anybody who would like to see this film, it will be shown here from 12:30 to 1:30, so that if any of you are interested and want to catch a quick lunch and get back to see the film, you can do that.

Let me just recognize some people who are here before we start taking statements. First of all, Michael Carozza is here from Senator Domenici's office. Senator Domenici was not in the State today and not able to attend, but did make a statement which we are going to have made a part of the record. Michael, where are you? Let me just recognize Michael so that if any of you need to talk with him about any matter you can.

Let me also say that we appreciate Leo Garza, the District Manager from the Social Security Administration, being here today. He has been working very closely with my offices in trying to resolve some of the problems that have come up in specific cases. Leo, we appreciate your being here. Please stand up so the people can see you.

Let me also say that Bill Richardson's office, I believe, is planning to have someone here later in the day, so I think John Quintana will be here from Bill Richardson's office.

Let me just say that there are quite a few statements we have received from people who would like their statements to be included in the official record of this subcommittee hearing, and we're glad to do that, and any of you who have statements that you are not planning to give in testimony but would like to have included in full in the record, we're glad to do that. So if you can be sure to get those to us, we'll have those included so that they will be printed and each of you can be sent a copy of the record so that you'll have a record of what was said here and what the testimony was.

At this point, Wilfred Martinez is a representative of the Governor's office. I believe Wilfred is prepared to give us a statement on behalf of Governor Anaya, who was unable to be here today, and so why don't you come ahead, Wilfred, and we'll hear your statement first, please. Go ahead.

TESTIMONY OF WILFRED MARTINEZ, OFFICE OF GOVERNOR ANAYA, SANTA FE, NM

Mr. MARTINEZ. Thank you for the opportunity to express his concerns on the issues raised by the Reagan administration's decision to cut benefits to the disabled. The Governor feels that the review process has not followed the letter of the law as it relates to individuals who are terminated by the Social Security Administration.

Our main concern relates to the consideration of social factors in the determination of eligibility for SSA benefits. We believe that not granting an individual a face-to-face interview, the social factors cannot be adequately evaluated. As we understand this law, the social factors must, in fact, be considered in the eligibility process. Related to this concern, it is extremely difficult for individuals who have been receiving assistance for many years to become fully employable. It's difficult.

The Governor's office in the last 9 months has responded to 62 inquiries from a number of counties across the State, and I should point out that that only represents the people who called in. Many of those people who have been declared ineligible, I'm sure, have not made any effort; have just accepted the consequences and have not made an effort to contact the Governor's office.

I mentioned earlier that it's difficult for somebody who has been receiving assistance to become fully employable in a short time. Many of these individuals are not able to make transitions and end up receiving assistance under our HSD Department's program. Some of these people who have no children are determined eligible to participate in the General Assistance Program.

Now, General Assistance is a limited program, and is funded entirely by the State. It provides assistance to individuals who have temporary disability and also provides assistance to individuals who have been denied SSI and meet our permanent disability criteria.

The average payment for General Assistance is \$126 a month. The Governor would like to point out that these individuals, although considered disabled, are not eligible for any type of medical assistance. The General Assistance caseload has increased 40 cases per year, and most of these individuals were people who were previous recipients of SSI, and have been dropped out as a result of disability review.

The financial effect on the State is approximately \$60,000 per year, and these figures that I'm giving you are approximations, because a completely accurate figure would require 100 percent case review, and we just couldn't get it together for the hearings.

Other people are added to the AFDC rolls, and AFDC is a program that provides financial assistance and medical assistance to eligible families whose children are deprived of parental support because of the death, absence, or disability of one or both parents.

The average AFDC grant is about \$209 a month. It should be noted that it is most probable that the families of individuals who weren't receiving SSI were already participating in AFDC. Therefore, the addition of only one individual to the AFDC grant would amount to about \$48 a month.

We can estimate the cost of approximately \$64,512 per year in the cases that have been added to the program. Of that \$64,512, approximately \$21,288 is in State funds.

Finally, there are many individuals whose benefits are terminated by Social Security who are unable to qualify for assistance from this State and from the HSD Department because their income exceeds the program's eligibility standards. Therefore, these families suffer a significant financial loss. We estimate that about 15 percent of the individuals who apply for Department assistance because their benefits were terminated by SSA are denied further benefits by the State because of—due to their income.

The cases that we get in the Governor's office represent a number of disabilities, but the issue in each case is the same: A disabled person has fallen through the so-called safety net and is flat on his or her back.

In most cases, the beneficiaries have had their benefits removed by an administrative law judge who has had no human contact with the person and has made a determination based solely on the opinion of others.

We would urge, Senator, that you move as quickly as possible to remedy the situation and that if there is any way in which we can be of further assistance, you may count on us.

Senator BINGAMAN. Thank you, Wilfred. Let me ask you just one question: My information—and you can correct me if this is in error—but my information is that there are nine States to date that have imposed moratoriums on continuing disability investigations because of all the problems they've encountered. Is this something that is being considered here in New Mexico, or has been considered, or might be considered?

Mr. MARTINEZ. Well, I think that the idea has been considered. I'm not exactly sure where it is at this point, but we are at present still hearing cases.

Senator BINGAMAN. OK. Thank you very much. We appreciate the Governor's involvement.

[The prepared statement of Gov. Toney Anaya of the State of New Mexico follows:]

PREPARED STATEMENT OF GOV. TONEY ANAYA

Senator, I would like to thank the committee for the opportunity to address the issues raised as a result of the Reagan administration's decision to cut benefits to the disabled.

The Social Security Disability Amendments of 1980 have seriously eroded the position of the disabled in the State of New Mexico.

I feel that the review process has not followed the letter of the law as it relates to individuals who were terminated by the Social Security Administration.

My main concern relates to the consideration of social factors in the determination of eligibility for SSA benefits. I believe that by not granting an individual a face-to-face interview, the social factors must, in fact, be considered in the eligibility process.

Related to this concern, it is extremely difficult for individuals who have been receiving assistance for many years to become fully employable.

Many of these individuals are not able to make the transition and end up receiving assistance under the Department of Human Services program. Some of these people who have no children are determined eligible to participate in the General Assistance program.

General Assistance is a limited program and is funded entirely by the State. It provides assistance to individuals who have a temporary disability and also provides assistance to individuals who have been denied SSI and meet our permanent disability criteria. The average payment for General Assistance is \$126 per month. I would like to point out that these individuals, although considered disabled, are not eligible for any type of medical assistance. The General Assistance caseload has increased 40 cases per year (most of these individuals were previously recipients of SSI) because of the 3-year disability review. The financial effect amounts to approximately \$60,000 per year.

Other people are added to the AFDC program. AFDC is a program that provides financial assistance and medical assistance to eligible families whose children are deprived of parental support because of the death, absence, or disability of one or both parents. The average AFDC grant totals \$209 per month. It should be noted that it is most probable that the families of individuals who were receiving SSI were already participating in the AFDC program. Therefore, the addition of only one individual to the AFDC grant would amount to \$48 per month. We can estimate a cost of approximately \$64,512 per year of the cases that have been added to the program. Of the \$64,512, approximately \$21,288 is State funds.

The data noted above is approximate data. To gather hard data would require a 100 percent review of all cases in the State. I did not think it was cost-effective to conduct such a review. Also, there was little time given for such an effort. The Department of Human Services will be able to easily retrieve such information when our computerization of programs is completed. Nonetheless, the fig-

ures noted above are very conservative approximations and it is felt that the impact on Department programs is much greater.

Finally, there are many individuals whose benefits are terminated by Social Security who are unable to qualify for assistance from the Department of Human Services because their income exceeds the program's eligibility standards. Therefore, these families suffer a significant financial loss. We estimate that 15 percent of individuals who apply for Department assistance because their benefits were terminated by SSA are denied by this Department due to income.

Senator BINGAMAN. The next witness is going to be Rick Fairbanks, who's director of the New Mexico Disability Determination Unit. Rick runs the office which conducts the disability reviews.

As I understand it, you work for the State, but you are required to adhere to the Federal guidelines that the Social Security Administration provides?

Mr. FAIRBANKS. Yes, Senator, we're under the division of vocational rehab in the State.

Senator BINGAMAN. We appreciate your testifying today. Go ahead.

TESTIMONY OF RICK FAIRBANKS, DIRECTOR, NEW MEXICO DISABILITY DETERMINATION UNIT

Mr. FAIRBANKS. I'm happy to be here. As Senator Bingaman indicated, we are the agency that has been making all the decisions.

For a little bit of background, I think some of the background is already included in the statements of Senator Bingaman and Senator Domenici.

As indicated in the statements, the GAO did a study in 1980 that revealed that 20 percent of the people that were currently receiving disability benefits were no longer eligible.

Removing these ineligible people from the rolls would result in a savings to the trust fund of over \$2 billion per year. Congress passed the 1980 Disability Amendments and mandated a review of all disability beneficiaries on the roll beginning in January 1982. The Administration accelerated this review and State agencies, disability determination units, began receiving cases in March 1981, 9 months earlier than the mandate of Congress.

These early cases were preselected from the Social Security Administration's Central Office as cases that would have a greater likelihood of being ceased, and thereby save the Administration funds.

The types of people that were included in these review cases were younger individuals, people who had impairments that were expected to improve, and people who had been on the rolls for a short time.

It appears that the Administration's objective was to remove as many ineligible beneficiaries from the rolls as possible, and thereby realize a savings to the disability insurance trust fund. The State disability determination units throughout the country apparently did the job well, nationally ceasing 400,000 cases reviewed, which was about 44 percent.

As the review continued, however, several factors combined to make the disabilities decisions more difficult. No. 1, the age of the beneficiary under review increased. No. 2, frequently, the severity of the impairment increased. No. 3, the time the beneficiary had been on the disability rolls increased. No. 4, the beneficiary had been out of the labor market for a long period of time in many cases. And, fifth, and prob-

ably most important factor was that the rules under which the disability decisions were made by the disability determination units became more rigid, compared to 5 or 6 years ago.

As an example, in New Mexico, the overall allowance rate in 1976—this is for all types of cases, initial cases, reconsiderations and continuing disability cases—the allowance rate was 42 percent. And in 1982, the allowance rate was 20 percent.

Senator BINGAMAN. Can you explain to me what you mean by the “allowance rate”?

Mr. FAIRBANKS. The allowance rate is the percentage of cases that were allowed to total cases completed.

Senator BINGAMAN. The percentage that you determined should be taken off the rolls or that should be left on?

Mr. FAIRBANKS. No, the percentage that should be left on.

Senator BINGAMAN. So the—

Mr. FAIRBANKS. Or, initially allowed at the beginning level.

Senator BINGAMAN. OK. And what were the figures again?

Mr. FAIRBANKS. Forty-two percent in 1975 was the overall allowance rate for New Mexico DDU, and 20 percent in 1982.

Senator BINGAMAN. So it dropped from 42 to 20?

Mr. FAIRBANKS. Yes.

Senator BINGAMAN. In a 4-year period?

Mr. FAIRBANKS. We're talking about—in terms of denial rates, we're talking about a 58-percent denial rate in 1975, and an 80-percent denial rate in 1982.

Senator BINGAMAN. OK. And that was a result of what? I'm unclear as to what exactly caused this.

Mr. FAIRBANKS. I'm getting to that.

Senator BINGAMAN. OK.

Mr. FAIRBANKS. It basically was a result of the Social Security Administration's saying that the regulations should be more rigid than they have been in the past. The disability regulations have been re-interpreted in the past 5 years and have reduced the role of the disability adjudicator, as far as I'm concerned, to that of an automaton.

I think it was mentioned in that clip from the “Frontline” interview that the supervisor from Louisiana, Wayne Parker, who cited vocational rule 202.17. Our disability adjudicators are currently heavily involved in making decisions on the basis of the regulations, the rules as they're set up. They have very little judgment in terms of making decisions, and I think that's the main reason for the reduction in the allowance rate.

Senator BINGAMAN. Let me just ask you about that. Now, you're saying that those who are adjudicating these cases in your department are—I think you used the phrase—are “reduced to the role of an automaton,” in that they have no discretion in reviewing the cases. They have to apply the rules, and that's the reason why you have 80 percent of the cases that you review being denied; is that accurate?

Mr. FAIRBANKS. That's my feeling.

Senator BINGAMAN. And that has been a change from the situation a few years ago?

Mr. FAIRBANKS. The regulations themselves have not changed that significantly, but the interpretation of the regulations, I believe, has changed very significantly.

Senator BINGAMAN. The interpretation as explained to the Social Security adjudicators of the State?

Mr. FAIRBANKS. To our adjudicators by the Social Security Administration—basically through the review process, and the—that is the way that the disability determinations are evaluated is through the review process, and the cases are reviewed at the Social Security regional office, and also at the central office, and a lot of interpretive policy decisions are made on the basis of these cases that are returned from regional and central office.

Senator BINGAMAN. OK.

Mr. FAIRBANKS. The vacuum that was left by removal of discretion from the adjudicators has been moved to the next level of appeal, the administrative law judge.

The reversal rate of the administrative law judge has doubled since 1977 from approximately 33 percent to nearly 66 percent in New Mexico. The disparity between decisions made by the DDU's and those made by the ALJ's is mainly a result of the continually more conservative interpretation of the criteria for disability as espoused by the SSA.

It is my opinion that the best and most expeditious disability decisions can be made at the disability determination unit level. The team of trained adjudicator and physician brings extensive medical expertise to the decisionmaking process and provides an equitable decision for both the beneficiary and the taxpayer.

However, this expert team must be given more latitude in making decisions for the system to operate best for all. So I see, basically, two changes that are necessary in the disability program. First of all, as I mentioned, more discretion at the disability determination unit level.

I would recommend—you were talking with Mr. Martinez—I would recommend a total moratorium on all CDI cases. Current legislation indicates that there will be an evidentiary hearing process which will be run by the Social Security Administration beginning in January 1984, and then with the Pickle bill, the House bill 3755, as it is currently set up, indicates that the States will take over this evidentiary hearing, which will be a face-to-face hearing effective in January 1985.

I believe that the administration should call a total moratorium on all CDI cases for that 1-year period. It would allow the State agencies time to staff up for the evidentiary hearing to start in 1985 and it would also allow the administration to be able to set up new guidelines, which I think are definitely necessary for continuing disability cases.

The continuing disability cases are much different from the initial cases that we see. The people have been—like I say, have been on the rolls for possibly 10 or 15 years. They have been out of the job market.

We need better guidelines or we need more discretion.

Senator BINGAMAN. Rick, let me just ask: I think you mentioned two possible moratoriums that exist, one—and just correct me here if I'm misstating this—but you're talking about how the State of New Mexico, in your view, should consider imposing a moratorium on the continuing disability investigations until some date in the fu-

ture when the Federal Government sorts out what the proper guidelines are or clarifies the law or something in this area, and then you're also talking about the Federal Government, the Federal administration should have a moratorium on cases nationwide up until January 1985? Was that what you were saying?

Mr. FAIRBANKS. Well, I would recommend a moratorium on all continuing disability cases up until January 1, 1985. The preferred option would be for SSA to declare a nationwide moratorium.

Senator BINGAMAN. And that would be both at the State level and at the Federal level?

Mr. FAIRBANKS. Yes.

Senator BINGAMAN. And the State moratorium can be done at the State level; is that correct? I mean, a decision can be made at the State level.

Mr. FAIRBANKS. It's my understanding that it has been done by Executive order in several States, yes, but I believe that the Social Security Administration has acquiesced in the suit out in California and Oregon, those nine States out there.

Senator BINGAMAN. OK. A little earlier you were saying that the reversal rate by administrative law judges of the determinations which are appealed is about 66 percent in New Mexico today; is that right?

Mr. FAIRBANKS. Yes.

Senator BINGAMAN. And what change is that, 66 percent, as compared to what kind of a reversal rate before?

Mr. FAIRBANKS. I believe in 1977 it was approximately a 33-percent reversal rate.

Senator BINGAMAN. I gather what you're saying is as your agency has been forced by the increasingly strict guidelines to cut down on the number of cases that you approve, the burden is shifted to the administrative law judges to make up for that by reversing your agency more and more?

Mr. FAIRBANKS. That's my opinion, yes.

Senator BINGAMAN. OK. All right. Well, we appreciate your testimony very much, and we appreciate your coming to the hearing today.

Mr. FAIRBANKS. Thank you, Senator.

[The prepared statement of Mr. Fairbanks follows:]



DIVISION OF VOCATIONAL REHABILITATION
DISABILITY DETERMINATION UNIT

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October 8, 1983

MEMORANDUM

TO: Senator Jeff Bingaman

FROM: Rick Fairbanks, Administrator *Rick*

RE: The SSA Disability Program

In the past year, there has been considerable interest in the disability program from many quarters: The public, Congress, State Legislature, state human service agencies, and advocacy groups. I have just completed reading two special studies on the subject:

1. A study from Massachusetts Vocational Rehabilitation Commissioner, Elmer Bartels - Task Force on the SSA Disability Program (12/22/82).
2. Recommendations on Disability Determination (11/19/82) from the National Council of Public Welfare Administrators.

One of the main problems that both of these studies cited was that long term disability beneficiaries whose claims were being reviewed under the 1980 Disability amendments were (1) being unfairly terminated, (2) had no means of support while their claim was being appealed.

Legislation in the 1982 "lame-duck" session of Congress allowed people to have the option to continue benefit payments thru the Administrative Law Judge Hearing. Legislation also mandated that SSA would provide for claimants to have a face-to-face hearing with the decision maker during the reconsideration of their claim.

What can be done to improve the disability process? I would like to discuss three areas which can improve the program.

- A. The first area deals only with the DDS's and the Social Security Administration and involves the loss of adjudicative discretion in the DDS's since 1976. Resolution is possible without legislation.
- B. The second area relates to the discrepancy between the DDS decisions and the ALJ decisions. Administrative remedies may be available, but final resolution may require legislation.
- C. The final method for improving the program is thru legislation. I will comment on what I feel would be appropriate legislation to accomplish this objective.

Discussion of these three methods for improving the disability program follows:

A. Loss of adjudicative discretion in the DDS's

In calendar year 1976, the N.M. DDS allowance rate was 35.8%. In fiscal year 1981, it was 19.3%. With approximately the same number of cases completed in each of those years, we, therefore, allowed 6,222 cases in 1976 and only 3,290 in 1981.

What occurred during that five year period to cause nearly a fifty percent reduction in the number of cases allowed?

In late 1977 and in 1978, a directive was communicated (verbally) to the state DDS's that when disability decisions were in doubt, the decision should be made in favor of the administration. The general premise under which DDS's had operated prior to this was that questionable decisions should be made in favor of the claimant.

Another directive (this one in writing) curtailed the DDS "judgement" in a critical area of the disability decision making process - the "equals" category.

Under the disability regulations, a claim can be allowed as "meeting" the listing of impairments (criteria in 13 different body systems which if met automatically are considered disabling); as "equalling" the listings (e.g., combination of impairments); or by considering a person's impairment plus adverse vocational factors (such as limited education, advanced age, etc.).

Curtailement of the equals category, perhaps provided more uniformity and consistency of decision making nation wide, but it also severely limited the judgement and discretion of DDS adjudicators and medical consultants. In N.M. in 1976, 25% of all cases allowed were done so on the basis of the equals concept. In 1981, this percentage was reduced to 8%. Nationally, the percent of equals decisions went from 45% in 1975 to 14% in 1980.

The Periodic Review of all disability beneficiaries has bridged the temporal gap between 1976 and the present and brought the discrepancy into sharp focus. We are now reviewing many cases of individuals who were found disabled in 1976 or before and whose benefits are now being ceased - even though their impairment has not improved, or may have worsened. The criteria for deciding whether an individual is disabled are clearly more restrictive now than they were in 1976.

Many of the perceived problems of the disability program could be resolved by allowing the DDS's more discretion in making disability decisions at the initial, reconsideration and continuing disability review levels. The 13,000 DDS employees thruout the nation constitute the core of expertise in the medical and vocational assessment of disability. As a result of this expertise, it is more likely that a correct disability decision will be made at the DDS level than at the Regional Office, Central Office, or ALJ level. Granting

more discretion to the DDS's would increase the allowance rate, and thereby reduce the number of individuals who proceed to the ALJ level.

Action in this area can be accomplished within SSA and would not require legislative action.

- B. The second problem area is the discrepancy between the DDS decision and the ALJ decision. Increased discretion at the DDS level, as mentioned above, can help alleviate this problem, but there are other actions that can be taken to bring the decisions of the two components closer together.

The ALJ application rate and reversal rate, obviously, has increased since the DDS's have been denying more cases. In 1976, reversals at all levels of appeal were about one-third of those that applied, i.e., about 33% of claimants who applied for reconsideration were allowed and the same figure for the hearing level. Those figures have changed drastically with reversal rate at the reconsideration level down to less than ten percent and the ALJ reversal rate up to 60% - (more in some jurisdictions).

The high ALJ reversal rate is being addressed by the SSA. Program Policy Statements, which will be binding on the ALJ's, have been issued, which are basically the same adjudicative criteria used by the DDS's. IF the ALJ's follow these policy issuances, the reversal rate will — decrease.

The drastic reduction in the reconsideration reversal rate, however, has not been adequately addressed. The recon reversal rate in N.M. has dropped to eight percent, less than one-quarter of the rate six years ago. The only factor that can account for this is the more restrictive adjudicative climate in the disability program. Disability examiners doing reconsideration cases are generally experienced in adjudication and have a better overall understanding of the program than initial examiners. If more adjudicative discretion was granted (at the recon level only), the need for the evidentiary hearing process might not have arisen.

C. Legislation

Much of the legislation that has been passed in the last five years has been palliative rather than curative for the disability program.

With the idea that vast amounts of trust fund monies could be saved, the 1980 amendments implemented the periodic review of all disability beneficiaries. Because the criteria for determining disability had become more stringent, the cessation rate was more than double the original prediction and cessation "horror stories" filled the media.

To resolve the problem of inappropriate cessations (and reduce the number of constituents contacting Congressmen's offices) another "patch" was placed on the disability program in the form of P.L. 97-455. This legislation provided for optional continuation of benefits thru the ALJ decision and mandated an evidentiary hearing at the reconsideration level.

The addition of another bureaucratic layer (Federal Hearing Officers) into an already highly bureaucratized system is totally beyond belief. The disability program needs to be simplified rather than being made more complex. I have expressed my objections to federalization of this program elsewhere and will repeat them here:

1. From the claimant's perspective:

- a. Adding another bureaucratic layer to an already complex State-Federal system will serve to further confuse disability applicants and beneficiaries.
- b. I don't believe the claimant will care whether the hearing officer is a state or a federal employee as long as he/she feels that their case has been fairly heard.

2. From the taxpayer's perspective:

- a. State administration of the program will cost less than federal administration.
- b. There will be fewer federal employees.
- c. State administration would be consistent with President Reagan's philosophy of decreasing federal government and assigning more responsibility to the states.

3. From a DDS Administrator's perspective:

- a. Expertise in developing and adjudicating disability claims is in the state agencies and the decisions will be more consistent thruout the process (initial, reconsideration, hearing) if they are all done by the same agency.
- b. The states have demonstrated that new programs can be handled effectively and efficiently and I believe that the evidentiary hearing would also be more effectively administered by the states rather than the Federal government.
- c. If the hearing program is federalized, it is obvious that the majority of the hearing officers would be recruited from the DDS's. In many states, this could have a demoralizing effect on DDS staff with Federal Hearing Officers (basically adjudicators) in the same city earning fifty percent more in salary than DDS adjudicators. (One administrator, however, saw this program as a good opportunity for advancement for DDS adjudicators and management staff).
- d. Several administrators suggested that a federal hearing program would keep the State Agencies in the position of the component

that denies claimants ("the black hat image") while the Feds would continue to be the component that overturned the obviously incorrect decisions made by the states ("white hats"). We all know that from the claimant, attorney and advocate groups' viewpoint, this phenomenon occurs currently with the ALJ's.

- e. The major problem I have with the apparent decision to use Federal employees is that the States were not consulted about the decision, or given any option relating to the program and that it was a unilateral decision made at the Central Office.

4. From an SSA perspective:

- a. A Federal hearing program would finally give SSA direct control over an appeal step in the disability process. (SSA does not currently have line control over the DDS's or the ALJ's). I believe that this is the main reason why the decision was made to use Federal staff. This appears to be an advantage, but would the program operate any more effectively just because it was staffed by federal employees?
- b. Again, a problem that SSA should consider is inserting another bureaucratic layer into an already highly bureaucratized system. When the hearing program is implemented (whether State or Federal), consideration should be given to eliminating the reconsideration process altogether.

Obviously, I am not convinced that the evidentiary hearing at the recon level will resolve the problems in the disability program. However, Senate Bill 476 (the Cohen-Levin Bill) appears to move in the direction of simplifying the program rather than complicating it.

This bill would eliminate the reconsideration step in the disability appeal process, but would allow a face-to-face interview between the initial decision-maker and the claimant. (Currently the reversal rate at the recon level is only about 8% in New Mexico).

Advantages of elimination of the reconsideration process include:

- 1. Reduce administrative costs by not having to do the reconsideration step.
- 2. The face-to-face interview at the initial level would be less costly than the combined cost of the reconsideration and evidentiary hearing.
- 3. Simplifying the disability process.
- 4. Coupled with more discretion at the DDS level, the elimination of the recon step could reduce the number of cases appealed to the ALJ.

In conclusion, movement in these three areas must be accomplished to improve both the employees' and the public's perception of the disability program.

- A. Increased level of adjudicative discretion at the DDS level.
- B. Reduce discrepancy between DDS and ALJ decisions.
- C. Appropriate legislation to make significant changes in the program (e.g., the Cohen-Levin Bill).

I appreciate the opportunity to comment on these critical issues.

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Senator BINGAMAN. Our next witness is going to be Alpha Schweedler from McIntosh, who has some testimony she'd like to present.

Please come down and have a chair.

TESTIMONY OF ALPHA SCHWEEDLER, McINTOSH, NM

Mrs. SCHWEEDLER. Senator Bingaman, and other members of the subcommittee, I thank you for inviting me to express my opinion on this subject, because I do feel strongly about it.

My opinion here is based upon my knowledge of the people with whom I am acquainted who do live off of these Social Security disability benefits. To begin with, when a person finally has to ask for this assistance, they have been through a bitter experience of becoming disabled.

The process of applying for assistance, usually being denied, appeals, going to court, and all of those things is a difficult, time-consuming—and it's even an humiliating experience for these people.

And now these same people are to be subjected to this routine again and again. That would indicate to me that people would hesitate to try to improve their lot, because if their efforts failed, they would still lose their benefit, because they tried to improve themselves.

The experience incurred by constantly reevaluating these people will no doubt be much more than the amount saved by removing a few of the cheaters found to be on the rolls, and many generally disabled persons are suffering unfair loss of this small income.

The stress of knowing that their only income may be withheld at any time is a constant, never-ending drain on these people physically and mentally and emotionally.

Surely, I know and we all know that our Government needs to save money, but there are many ways to do that without punishing the most helpless people in our Nation.

Thank you very much.

Senator BINGAMAN. Thank you very much. I appreciate your coming from McIntosh with that.

Let me say that the rest of the testimony, or nearly all of it, we're going to try to do in a sort of a panel format, so we don't spend quite so much time getting people over to the table and back to their chairs. So I'm going to ask two people to come forward on this next panel, Dr. Nancy Morrison, who is an Albuquerque psychiatrist, and also Edith Richards, who is representing her husband who's a claimant in Las Vegas.

If the two of them would be able to come forward, that would be very helpful. Why don't you go ahead, Dr. Morrison, and then we'll hear from Edith after your testimony.

TESTIMONY OF NANCY K. MORRISON, M.D., PSYCHIATRIST, ALBUQUERQUE, NM; AND EDITH RICHARDS, LAS VEGAS, NM

Dr. MORRISON. I'm Dr. Nancy Morrison, and I'm assistant professor of psychiatry at the University of New Mexico. I'm also the administrative and clinical director of the partial hospitalization programs here. I have spent the majority of my professional career working with patients with a diagnosis of schizophrenia or psychosis.

This is the patient group who are often referred to as the chronically mentally ill. Over the last 13 years I have learned a great deal about the illness and have seen the devastating effects that it has on all aspects of these peoples' lives.

I'm pleased to have an opportunity to speak to you about the dilemmas of these people, especially in regard to their unnecessary struggles to receive deserved funds and support from the Social Security Administration.

I hope I can clarify the situation of these people who are forced by the nature of their illness to turn to the authorities or our society to meet their very basic needs. They live in that dangerous and dependent position of being at the mercy of the good will of strangers.

Over the years, I have seen patients struggle with asked-for funds for their support from the Social Security Administration. Some years ago, this involved first helping the patient deal with the shame of being unable to work and needing to accept public funds.

Earlier in my career, disabled mentally ill patients generally received the necessary financial support, but there's been a change in the recent years. Patients on SSI are now suddenly being reviewed. Chronically ill people are being terminated from Social Security.

In addition, new applicants are frequently being refused. In the last few years, all new applicants from my programs have been turned down when they applied for funds.

I would like to share some of their situations in more detail later, but let me say that each one of these applicants was diagnosed as schizophrenic, has been ill for more than a year, is on medications, have been hospitalized at some point, and were all incapacitated to the extent that they were involved in full-time day treatment programs.

With this information available, Social Security denied their claims. The nature of schizophrenic illness makes its victims an easy target for discrimination of many kinds. It is largely an invisible illness, and unlike blindness or deafness or paralysis, an untrained individual will not see a quiescent mental or emotional disturbance. An observer cannot hear a hallucination or feel the terror of persecution, and because schizophrenics have learned that others fear their symptoms and at times will ridicule them, they attempt to cover up their symptoms.

They give brief, simple answers, deny their symptoms, and in this way, their illness is overlooked. Mental illness is also feared. Schizophrenia must be identified as a disease process, and not an attempt by an ill individual to take advantage of the system. It is not a social or cultural problem, although it leads to these. Schizophrenia is a disease that is present in all cultures. It has been described in historic writings, and in any culture, about 1 percent of the population will be diagnosed as schizophrenic.

Schizophrenia is often seen as not an illness, but an attempt of someone to take advantage of the system. This, I think, happens in Social Security disability claims. These people will be described as schizophrenic. Their symptoms will be spelled out in detail, and then they will be denied funds. I think this is inconsistent with what we know about schizophrenic illness.

Psychosis is a very disabling state of mind. It is the experience of the world of nightmares. It is a torment of an unrelenting manner. People who suffer from psychotic illness feel that the dead can speak to them; that others can look inside them with x-ray vision; and that thoughts totally foreign to them stream into their minds. If you had this going with you, you certainly would not be able to work.

In the quiescent period of this illness, people often apply for funds from Social Security. People view this period of the illness as a normal state. This is certainly not true. I would like to read for you the APA's definition of the residual or quiescent period of schizophrenic illness:

It is marked by social isolation, impairment of role functioning, peculiar behavior, impairment of grooming and hygiene, blunted, flat, or inappropriate emotion, digressive, vague, overelaborate speech, odd or bizarre ideation, an unusual perception of an experience. These patients in the quiescent period often report ongoing delusions, hallucinations, reality distortions.

And yet they are felt by the Social Security Administration to be able to work while this mental process is going on.

Current medications do have an effect on this illness. They help to shorten the psychotic periods and maintain the quiescence, but the medications are not curative, as has been stated by the Social Security Administration. The psychotropic medications might be compared to taking aspirin for pneumonia. Aspirin might bring about temporary relief for acute symptoms, but it does not cure. It can decrease suffering and confusion, but it also produces side effects.

In our society today, a major change has come about in relationship to the chronically mentally ill. The institutionalization has occurred and is a mixed blessing in part brought on by the widespread use of these medications. The medications do increase the quiescent periods, and many people no longer require total institutionalization. The institutionalization has created a major social change in how the severely mentally ill live in our culture.

Prior to the 1960's, many lived out their lives in State mental hospitals. There our society provided food, shelter, clothing, psychiatric and medical needs, recreational, and interpersonal contact. Now, the schizophrenic lives primarily in the quiescent stage and is forced to live in the community.

Since 1965, the population of State hospitals has decreased by 70 percent. People developing psychotic illnesses do not go to State hospitals. They are expected to live in the community and most of them want to do this. But our society has not provided adequately for this shift.

Community mental health centers were created, but are limited in what they can provide. The patient must turn elsewhere to seek necessary help. He often faces a maze of bureaucracy which includes the Social Security Administration. Our current systems for providing what had previously been received in State hospitals may not be working well, and, in fact, no comprehensive plan was ever established. The Social Security disability system is that agency established by our society to provide for disabled people unable to work.

It was not established with the mentally ill patient in mind. When deinstitutionalization occurred, the Social Security Administration was simply adopted for this purpose. It is the responsibility of the Social Security Administration to provide funds for psychiatrically disabled citizens who might previously have been cared for in total institutions.

These people are in need and must turn to the Social Security Administration in order to support themselves in the community financially.

I would like to share with you some clinical examples of what happens to chronically mentally ill people in their dealings with the Social Security Administration. The first case I'd like to present is that of a woman who was in her twenties and had a 4-year history of psychotic illness, had been hospitalized several times, and was treated with two different kinds of major tranquilizers.

She maintained herself in the community on SSI. She did engage in therapy and maintained some minimal level of stability in this manner. When her Social Security was called up for routine review, she was flooded with panic. Her behavior became agitated, and her symptoms increased.

She went to an interview, but her benefits were terminated. She responded to this by an impetuous flight, traveled into another State, and for several days her whereabouts were unknown. She was finally found acutely psychotic, disheveled, alone, and terrified.

A second case is that of a man in his twenties who has been on Social Security for several years who was called up for a review and summarily terminated. This man suffers from severe schizophrenic illness which leaves him unable to communicate coherently. He has very primitive symptoms. When he sits before another individual, he mimics the behavior and the speech of that person in front of him.

It appears that he was terminated because routine medical records, quote, stated he had "improved." In addition to the severe schizophrenic illness, this man is also mentally retarded. This diagnosis was also included in those medical records.

This situation demonstrates the need to be very clear on what we mean by "improvement." In psychiatric records, this is very relative and refers to very limited goals. An individual who has been isolated and by himself 24 hours a day for years may be considered improved because he now attends a day treatment program.

As I mentioned earlier, a problem that I'm facing now is that all patients who have applied for Social Security have been turned down. These are oftentimes then reversed at the administrative law judge level, but this produces an unnecessary complication for these people, denies them funds for a period of time, and puts them through, I think unnecessary suffering.

I would like to give you some examples of patients this has happened to in the last few months. The first is a single man in his twenties who had been recently discharged from a hospital. He was receiving medications. He had a diagnosis of catatonic schizophrenia from three separate psychiatrists. He was attending a day treatment program full time. There he was able to initiate no contact with other people and stayed totally to himself.

His internal world he described as dominated by intense feelings of unrelenting guilt. He was determined able to work. Within the last month, this was reversed by an appeal judge.

In another situation I had a young woman who had never worked. She had two hospitalizations and two additional psychotic episodes. She was able to answer routine questions and, in fact, felt compelled to do so in front of authorities. She was a very self-conscious woman who often appears to be shy and coquettish. She does give a good appearance, because this is her last stronghold with a very fragile self-esteem. This was interpreted apparently by the Social Security Administration as someone who was able to work.

She, however, in a trust relationship of psychotherapy, describes that her internal experience is that of hallucinations, reality distortion, racing thoughts, internal feelings of no self-worth. Her benefits were denied.

Another young man recently related to me that in spite of an organic memory impairment secondary to brain trauma, epilepsy, substance abuse, and two recent suicide attempts, was turned down by the Social Security Administration because he is the beneficiary of a piece of land in his mother's will. His mother happens to be in very good health. I have not been able to verify this case.

Although these are oftentimes reversed by appeal procedures, these procedures require that the person go before a judge to present himself as a mentally ill person and to present himself as one who is unable to function in society. This is a very terrifying and demeaning experience for these individuals. I believe that our society has a responsibility to provide for its members who are truly unable to care for themselves. We are a civilized and a sophisticated people. Despite our current economic concerns, we are, by world standards, a very wealthy country.

As a humane society and as humane individuals, we cannot abandon those among us who are in true need. I would like to quote George Bernard Shaw in this regard, who says: "The worst sin toward our fellow creatures is not to hate them, but to be indifferent to them. This is the essence of inhumanity."

Senator BINGAMAN. Thank you very much, doctor. That was excellent testimony, and I have a question or two, but let's go ahead and have Edith testify first.

Mrs. RICHARDS. Well, to start off with, I'd like to say that my husband was diagnosed as a paranoid schizophrenic in February 1975 when he had a nervous breakdown while he was currently serving in the military. At that point, the doctors had him on 400 milligrams of Thorazine per day and 200 milligrams of Dalmane at night so that he could get some sort of sleep. As any doctor will tell you, these are megadoses of this type of tranquilizer, and it still did not calm him down to an acceptable level.

He was released from the military. We were in Alaska at the time, and consequently, we moved to Albuquerque, NM, because we had always preferred this region to anyplace else in the United States.

In August 1976 he did suffer a heart attack, which was caused by a buildup of a lactic acid, which was created by nerves from overwork in a job that he was holding. At that point, we applied for unemployment because the doctor said he could still maintain a desk job if he

could find one. Unemployment did begin to pay us. After 5 months, they cut us off because they said he could not work, so we went back to the doctors again and he was going to Drs. Bette and John Graham in Albuquerque, psychiatrists.

And they had ended their treatment of him with his heart attack and told him that he should go to the Veterans' Administration because of his military background; that they could not take that much more time with him because it would be ongoing treatment for several years.

We then went to the VA when unemployment was terminated and we also went to Social Security Administration. This was in May 1977. Social Security then approved his claim and said that, yes, he was incapable of working. He was totally disabled. So did the VA.

Well, in June 1982, Social Security called him in for a review and decided that he had improved, which he had, because in the meantime, we'd moved outside of Las Vegas to the mountains. We had managed to purchase 40 acres out there which we are still paying for, of course, and I had managed to get him totally off of any kind of medications and he had stabilized at that degree.

However, when he was put in any sort of socially stressful situation, a crowd of people or an authority figure having to do with his personal life, his blood pressure shoots up to an unacceptable level. He's had blood vessels break under his eyes just on the spur of the moment, so that he has black eyes, and he starts having palpitations, which is why I removed him to the country to get him away from it.

He has a horror of drugs because being in the military when he was during the Vietnam war, he saw many of his friends kill themselves with drugs. And he does not want even so much as an aspirin if he can help it, which precludes any more treatment with tranquilizers or psychotropics, so he's in a situation at this point where we are unable to support his lifestyle at this point.

We will either have to sell our property and move back to town so I can then go back to work and support us, or we will have to be able to somehow get some other type of income.

Now, Social Security—I did not quite follow the exact procedures as they are written. I appealed the first two appeals, and within 10 days had a reply that, no, he was still capable of working; that the decision was maintained.

With the last appeal where you go before the judge, my husband found out what I was doing and told me to stop. He did not want to fight it any longer. He did not want their money because that just gave them another way to manipulate his life as they had already proven by taking it away from us and making us incapable to support ourselves as we had been.

This is his opinion of the Government at this time; that the only reason they want to give him any money is so that they can then manipulate him by taking it away whenever he doesn't do what they want him to. I can't convince him differently of this, but he's determined that he wants nothing more to do with any type of income from the Government, whereas, I am sitting here thinking where else are we going to get it if not from the Government?

Other than that, I think that the decision that they made when they terminated his Social Security was very arbitrary. The doctors that they sent him to had never seen him before, had no files whatsoever from Social Security or the Veterans' Administration about his case. They spoke to him for 5 minutes alone, they did not speak to me whatsoever.

At that time, he was working under what he calls his "quail theory." If you look and sound like everyone else, they'll leave you alone, which is very true. It works beautifully, but it does not help in being able to seek the type of help that he needs.

At the same time, in July 1982, 1 month to the exact day after the Social Security review, the Veterans' Administration reviewed him and found no change whatsoever in his condition.

So it's kind of left in the air. One Government agency says he has no change; the other Government agency said he's perfectly capable of working again. Why can they not get together and review the records and make a determination?

Senator BINGAMAN. So at the present time, am I right that his disability benefits have been terminated?

Mrs. RICHARDS. That's correct.

Senator BINGAMAN. Does he still receive benefits from the VA?

Mrs. RICHARDS. Yes, he does.

Senator BINGAMAN. For the disability?

Mrs. RICHARDS. Yes.

Senator BINGAMAN. And you are not pursuing any appeal at this time?

Mrs. RICHARDS. Since the news stories started coming out on the television about so many reversals, I have contacted your office for help, and Becky has been very kind in helping me to initiate the correct procedures and paperwork and see the people I needed to see.

And we have applied for a hearing, and I did recently receive the paperwork that said the hearing has to be granted but a date has not been set yet.

Senator BINGAMAN. Thank you very much. We appreciate your testimony.

Let me just ask Dr. Morrison: You said that all of the new applicants from your program, as I understand it, have been turned down? Over what period—I mean, how long has it been since an applicant from your program has been accepted?

Dr. MORRISON. You mean on the first go-around?

Senator BINGAMAN. Yes, before the appeal process and all.

Dr. MORRISON. Well, thinking back to April, no one has made it on the first request.

Senator BINGAMAN. Since April of this year?

Dr. MORRISON. Yes.

Senator BINGAMAN. How many people do you estimate you have referred to the program who were turned down from April until now?

Dr. MORRISON. I can think of six at the moment. I'm not sure if that's the exact figure, but I can think of six people.

Senator BINGAMAN. All right. Well, I appreciate the testimony of both of you. It was excellent. Thank you very much.

[Dr. Morrison's prepared statement follows:]

Prepared Testimony of Nancy K. Morrison, M.D. for Senate Hearings
Concerning Services of the Social Security Administration to the
Chronically Mentally Ill.

My name is Nancy K. Morrison, M.D. I am Assistant Professor of
of Psychiatry at the University of New Mexico Medical School, and I am
administrative and clinical director of the Partial Hospitalization
Programs. I received my M.D. from the University of Colorado in 1972 and
did my psychiatric training at Georgetown University in Washington DC
from 1972 - 1975. I have spent the majority of my professional career
working with patients with a diagnosis of schizophrenia or psychosis.
This is the patient group often referred to as chronically mentally ill.
Over the last 13 years, I have learned a great deal about the illness we
diagnose as schizophrenia and have seen the devastating effects that it
produces in all aspects of the victim's life.

I am pleased to have an opportunity to speak to you about the dilemmas
of these people. Especially in regard to their unnecessary struggles to
receive deserved funds and support from the Social Security Administration.
I thank you for your interest in the welfare of this group of people who
are often neglected, passively and actively abused and who can provide
little defense or advocacy for themselves. I hope I can clarify the
situation of these people who are forced by the nature of their illness
to turn to the authorities of our society to meet their basic needs. They
live in that dangerous and dependent position of being at the mercy of the
good will of strangers.

Over the years, I have seen patients struggle with requests for funds
for their support from the SSA. Some years ago, in better economic times,
this involved first helping the patient deal with the shame of being unable

to work and needing to accept public funds. Often these patients come from working families, wish to work themselves, and are tormented by their failures to succeed in work. Also, I've helped patients deal with the fear of facing strangers in a complex bureaucracy and dealing with this complexity through the confusion of a schizophrenic thought disorder. Earlier in my career, however, disabled mentally ill patients generally received the necessary financial support.

There has been a change in recent years. Patients on SSI are being reviewed. Chronically ill people are being terminated from Social Security. In addition new applicants are frequently refused. In the last few months, all new applicants from my programs have been turned down when they applied for funds. I would like to share some of their situations in more detail later, but let me say now that each of these applicants were diagnosed schizophrenic, had been ill over one year, were on medications, had been hospitalized at some point, and were all incapacitated to the extent that they were involved in full time day treatment programs.

The nature of schizophrenic illness makes its victims an easy target for discrimination of many kinds. It is largely an invisible illness. Unlike blindness, deafness or paralysis, an untrained individual will not see quiescent mental-emotional illness. An observer cannot hear a hallucination, feel the terror of persecution or unrelenting guilt for imagined sins. Because schizophrenics have learned that others fear their symptoms and at times will ridicule them, they attempt to cover-up their symptoms. They give brief simple answers so that their thought disorders aren't discovered. They deny hallucinations, delusions and unusual ideas and beliefs because they fear other people and have experienced scorn and humiliation because of these symptoms. This invisible illness combined

with some attempt to appear normal can lead to this illness being overlooked and the patient being redefined as lazy.

The schizophrenic illness creates a world of inner torment and confusion. There is often a deep fear of other people and profound distortions of interpersonal interactions. The confused, frightened, schizophrenic is generally unable to state his case or defend himself and is therefore easily scapegoated, overlooked and dismissed.

Mental illness is also feared. It is frightening to others to be around severely disturbed individuals. Individuals and society are intolerant of unusual behavior and thoughts. Traditionally mental illness is denied and those who have this disability are shunned.

I would like to acquaint you with the disease of schizophrenia. This understanding is so crucial for those of us who have positions of responsibility and power in the lives of these people, whether as physicians, congressional representatives, human service workers or social security workers. As I began my work with schizophrenics, I was much impressed by the poetic warning statement of Harry Stack Sullivan who pioneered psychotherapeutic work with schizophrenics: "We are all more human than otherwise." This provides an essential philosophic point of view in understanding this disease.

Schizophrenia is a disease process. It is not a social or cultural problem although it leads to social and cultural problems. It is not a result of bad character or lack of will, although the disease causes an arrest of character development which handicaps the individual and robs him of his will.

Schizophrenia is a disease that is present in all cultures and has been described in historic writings, including those of Hippocrates. * In any culture, at any time about 1% of the population will have diagnosable

schizophrenic illness.

There is a genetic predisposition to schizophrenia and to the other major psychiatric illnesses of severe depression and mania. Although complex and not yet understood, genetic trends have been described by numerous researchers in different cultures.

Pharmacological intervention has produced a change in the course of the diseases. This change is currently limited in effect, but it does suggest a biochemical involvement in schizophrenia, depression and mania.

Schizophrenia follows a rather predictable course. It strikes young people usually between the ages of 15 and 21 as they are on the brink of adulthood. Usually it begins with a withdrawal from personal relationships and activities. The individual becomes preoccupied with internal ideas and fantasies about religion, the cosmos and the unknown. In addition, the individual has begun to fear other people, to be suspicious, to grossly misinterpret interpersonal interactions. This is followed by an overt, acute psychosis.

This psychosis takes on well known characteristics of this phase of the illness. The descriptions by Eugene Bleuler in 1909 are very similar to the current Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition, published by the American Psychiatric Association in 1980. False beliefs, known as delusions, dominate the individual's feeling experience. These are beliefs of being controlled or being persecuted by powerful, vindictive forces. The individual feels a total loss of personal privacy. It is felt that thoughts can be heard by others and controlled by others. This is often accompanied by auditory hallucinations. These voices may threaten the individual, laugh at him, talk about him, or command him to take actions he fears or believes immoral.

This experience is like the world of nightmares. There is no consistent sense of time. Torment may seem to go on in an unrelenting manner. The usual taken for granted laws of nature and reality are lost to this world of psychosis where the dead can speak, others can look inside with x-ray vision, and thoughts totally foreign to the individual stream into his mind. Intolerable urgency for unknown action may plague him.

The following is a personal description of an acute psychotic experience taken from Autobiography of a Schizophrenic Girl by Marguerite Sechehaye. Pages 40-43.

"...I saw things...so illuminated and tense that they filled me with terror ...and began to take on life, to exist.

At the same time I received orders from the System. I did not hear the orders as voices; yet they were as imperious as if uttered in a loud voice. While, for example, I was preparing to do some typing, suddenly, without any warning, a force, which was not an impulse but rather resembled a command, ordered me to burn my right hand or the building in which I was. With all my strength I resisted the order.

An indescribable anguish squeezed my heart, an anguish no resolve could allay. If I refused to obey, I felt guilty and cowardly for not daring, and the anguish mounted. Then the order became more insistent. If, finally to obey, I went to the fire and stretched out my hand, an intense feeling of guilt overcame me as though I were doing something wicked, and the anxiety waxed in proportion. I should say, however, that the latter alternative provoked the greater disturbance, for I felt that if I obeyed the order, I should commit an act irreparably damaging to my personality.

While I fought with all my strength not to let myself sink in the Enlightenment, I saw things mocking me from their places, taunting me threateningly. And in my head foolish phrases floated around without let-up.

I closed my eyes to escape the surrounding turmoil of which I was the center. But I could find no rest, for horrible images assailed me, so vivid that I experienced actual physical sensation. I can not say that I really saw images; they did not represent anything. Rather I felt them. It seemed that my mouth was full of birds which I crunched between my teeth, and their feathers, their blood and broken bones were choking me. Or I saw people whom I had entombed in mild bottles, putrefying, and I was consuming their rotting cadavers. Or I was devouring the head of a cat which meanwhile gnawed at my vitals. It was ghastly, intolerable.

One day, trembling, I placed the back of my right hand on the incandescent coals and held it there as long as possible. By thinking of my duty to the System, and that it might then stop issuing injunctions, I was able to stand the pain. At this moment the head of the office came in unexpectedly. Quickly withdrawing my hand, I was relieved at the thought that he had not seen me. But I was mistaken. He had no doubt grasped the situation at once, for he notified the physician of the Council for Supervision of the Mentally Ill, who happened to be my own doctor."

In the quiescent period this young woman was able to reflect on her psychotic period and record some of the terrors she experienced.

This profound interior experience is accompanied by what is called a thought disorder. Thinking and speech become illogical, incoherent or may be blocked. This greatly impairs the patient's ability to communicate or convey his needs. The following paragraph is taken from The Theory and Practice of Psychiatry by Fredrick C. Redlich and Daniel X. Freedman. Page 469-470.

"Patient: Fundamentals of ideas, principles and, ways and means and this and that, I understand this business isn't discussed too much, but aah personally speaking I believe that-aah this has arisen in the facts

that this situation is brought to my attention. The reason I say my attention because I thought anything like this discussion would be brought up into three parties. I believe in dancing or party or anything like that, the third part or something like that, or any parts that people discuss. I aah generally feel that the situation calls for aah, well you know I just don't, understand that aah this principle discussions."

This incoherence is typical of schizophrenia. One can appreciate the difficulties in navigating a bureaucracy or a job interview with this severity of communication problem.

These are examples of acute psychotic episodes. The course of this illness over several years will be marked by periods of acute psychotic episodes with quiescent periods in behavior. This quiescent period is the one generally presented by the patient to such agencies as the Social Security Administration. This quiescent period or stage of remission is often interpreted as "normal" or symptom free. This is far from the actual situation.

The DSM III lists the residual symptoms of the quiescent period as follows on page 189:

Residual phase: Persistence, following the active phase of the illness, of at least two of the symptoms noted below, not due to a disturbance in mood or to a Substance Use Disorder.

Prodromal or Residual Symptoms

1. social isolation or withdrawal
2. marked impairment in role functioning as wage-earner, student, or homemaker
3. markedly peculiar behavior (e.g., collecting garbage, talking to self in public, or hoarding food)
4. marked impairment in personal hygiene and grooming

5. blunted, flat, or inappropriate affect
6. digressive, vague, overelaborate, circumstantial, or metaphorical speech
7. odd or bizarre ideation, or magical thinking, e.g., superstitiousness, clairvoyance, telepathy, "sixth sense," "others can feel my feelings," overvalued ideas, ideas of reference
8. unusual perceptual experiences, e.g., recurrent illusions, sensing the presence of a force or person not actually present

The schizophrenic may value the quiescent period as one less tormenting or may experience it as extreme boredom and deadness. Often patients report ongoing delusions, hallucinations and reality distortions during this period but at a less intense level. Stress, especially interpersonal stress, increased responsibility, or changes in environment, will cause a recurrence of the acute psychotic phase. Pressing a schizophrenic individual to work not only forces him to expose his functional limitations to himself and others, but puts him at risk of an exacerbation of his illness.

Current medications do have an effect on this illness. They help to shorten the overt psychotic periods and maintenance medication helps maintain the quiescent periods. The medicine is not, however, curative. In talking with a patient about his psychosis and his medications, I asked if the medication removed his symptoms. He very candidly replied that this was true from my point of view but within himself he struggles with the same questions of unreality as during his psychosis.

The psychotropic medications might be compared to taking aspirin for pneumonia. Aspirin might bring temporary relief for acute symptoms of fever and pain but it does not cure the illness in the way penicillin does. The psychotropic medications are helpful. They decrease suffering and confusion

but symptoms and incapacities remain and vulnerability to acute episodes continue.

These medications produce side effects. Patients often complain of dizziness, blurred vision, tremors, muscle stiffness and severe restlessness. These side effects can be reduced but patients may endure ongoing discomfort. The medications can also produce an irreversible movement disorder called Tardive Dyskinesia. So while undoubtedly helpful, these medications are far from curing this illness and providing patients with a normal life.

Deinstitutionalization has been a mixed blessing in part brought on by widespread use of these medications beginning in the late 1950's. The medications did increase quiescent periods and decrease the amount of disorientation in schizophrenic illness. Likewise, lithium modified the course of manic-depressive illness and antidepressants modified depressions. Many people no longer required total institutional care and returned to live in the community.

Deinstitutionalization has created a major social change in how the severely mentally ill live in our culture. Prior to the 1960's many lived out their lives in state mental hospitals. There our society provided for their food, shelter, clothing, psychiatric and medical needs, recreation and interpersonal contact. The unmedicated schizophrenic and psychotic presented a profound need that could not be ignored.

Now the schizophrenic lives primarily in the quiescent state sustained by drugs and restabilized in short term hospitalizations of a few days with large doses of medications when acute exacerbation demands this. Since 1965 the population of state hospitals has decreased by 70%. Many people developing psychotic illness now never go to a state hospital. The patient is expected to live in the community and most of them want this freedom and work hard to maintain it.

But has our society provided adequately for this shift? Community mental health centers were created and are now well established, but they are limited in what they can provide. In New York state, despite a 70% drop in in-patient population, the state hospital system received \$4.5 billion from 1978 to 1982. During the same period community based services received only \$540 million. The money has not followed the patients.

Indeed, community mental health centers are not equipped to meet all the needs of the chronically mentally ill. Often they provide only case management and medication to the majority of their patients.

The patient must turn elsewhere to seek further help. Often he faces a maze of bureaucracy, the Veteran's Administrations, the food stamp office, public assistance, medicare and social security. Given the impairments I have outlined that these patients endure, this task is often overwhelming.

Our current systems for providing what had been previously received in state hospitals may not be working well. It is not clear that a comprehensive plan was ever established. An article in the September 1983 issue of Hospital and Community Psychiatry, reported findings from an inpromptu winter shelter in Philadelphia in 1981. They reported that of the 193 people who sought shelter because they were homeless, 151 or 84.4% were diagnosed by psychiatrists as having mental illness. They found physical illness in 22%.

Because the majority are unable to work, they apply for social security for subsistence funds. Most have been unable to work enough to be eligible for social security disability because they became ill before age 21. The amount received on SSI is about \$300/month in New Mexico.

The social security disability system is that agency established by our society to provide for disabled people unable to work. This system

was not established with the mentally ill in mind. When deinstitutionalization occurred, SSA was adopted for this purpose. Although not designed to meet the needs of these psychiatric patients, it is the agency provided to do so. It is the responsibility of SSA to provide funds for those psychiatrically disabled citizens who might previously have been cared for in total institutions.

I would like to share with you some clinical experiences that I have been directly involved in as a psychiatrist. The first two are situations of individuals who faced termination of SSI.

CASE I

A woman in her 20's has a 4 year history of manic depressive illness. She had been hospitalized several times and was treated with lithium but also required major tranquilizers to maintain some stability. Because of her frequent angry outbursts and inconsistent behavior, she was asked to leave the family home. This was a crisis, a psychotic decompensation with hospitalization followed. After much work and a second hospitalization she did apply for and receive social security. She maintained herself in the community with ongoing vicissitudes, and two failed attempts at working, but she did engage herself in therapy and maintained some minimal level of stability. When her social security was called up for "routine review", she was flooded with panic. Her behavior became more agitated and symptoms increased. She did attend the scheduled interview with staff support but her benefits were terminated. She responded to this by an impetuous flight and traveled to another state. For several days her whereabouts were unknown. She was finally found, acutely psychotic, disheveled, alone and terrified in a strange town.

CASE II

A man in his late 20's who had been on SSI for several years was

called up for review and was terminated. He suffers from a severe schizophrenic illness that leaves him unable to communicate coherently. He demonstrates, even at his highest level of functioning, symptoms of echolalia and echopraxia. These symptoms mean he mimics the gestures and words of the person he is talking with. These primitive defenses or symptoms are rarely seen now that patients don't regress as drastically as they did prior to appropriate medications becoming available. It appears he was terminated because routine medical records noted "improvement." In addition to severe schizophrenic illness, this man is also mentally retarded, a diagnosis also included in that medical record.

This situation demonstrated the need to be clear as to the meaning of "improved" when it is noted in psychiatric records. This statement is highly relative. It refers to previous levels of illness and is often seen in the context of very limited goals. For example, a patient spending 24 hours/day alone, hallucinating in his room might be seen as improved by a psychiatrist because he now answers simple questions for the therapist and occasionally attends a day treatment program. This "improved" patient may still spend 18 hours/day in his room and remain essentially mute in a day treatment program. This level of clinical improvement obviously does not equal employability or cure.

As I mentioned earlier, all four patients in my program who applied for SSI over the summer were denied benefits and were determined able to work. Let me share some details.

CASE III

The patient is a single man in his 20's recently discharged from an inpatient unit and receiving medications regularly. His diagnosis is catatonic schizophrenia. He attends a day treatment program full time. There he initiates no contact with others and stays totally to himself

unless drawn out by staff. After six months of treatment he is verbalizing single sentences in special sessions with his therapist. His internal world is dominated by intense feelings of unrelenting guilt.

He was determined able to work. This was reversed by an appeal judge, after additional letters were submitted, and appropriate clinical staff attended hearings.

CASE IV

The patient is a young schizophrenic woman who has never worked. She has had two hospitalizations and two additional psychotic episodes which were treated in an outpatient setting. She is able to answer routine questions with very simple responses. She feels compelled to do so for authorities. She is extremely self conscious which gives her the appearance of being a somewhat shy but smiling, coquettish young female. She maintains her physical appearance well as a last stronghold of her very fragile self-esteem and individual identity. In the trust relationship of psychotherapy, she reveals hallucinations, reality distortions, racing thoughts, thought distortions and intense fear, all on a continuous basis. These internal feelings are masked by the smile. Her denial of benefits was also reversed by a hearings judge.

CASE V

The next patient is a young man with organic memory impairment resulting from a brain trauma who also has epilepsy, substance abuse and depressive episodes that include two serious suicide attempts. Reportedly, he was rejected for benefits because he is listed as a beneficiary of a piece of land in his mother's will. His mother is in her 40's and is in good health. I have not been able to verify this.

Although some cases are ultimately reversed by the appeal procedure, this creates several difficulties. The patient, who may be without resources,

is forced to wait for funds which may or may not be granted. He is also asked to go before a judge, present his case and also present himself as a mentally ill patient unable to function. This can be a terrifying and demeaning experience for these individuals.

In addition, further staff time both in the mental health agency and the SSA is required. A staff member may go with the patient. This situation, while helpful in presenting the patient's case, may put the therapist in a conflicting position. In therapy the staff person often is working to help the patient develop some self-esteem and believe in the possible hope of eventual improvement. However, in a hearing, the therapist must detail for the judge, in the presence of the patient, all of the serious symptoms and limitations of the patient which support the contention that he is incapable of employment and has little likelihood of achieving significant improvement. Not only can the very tenuous trust between the therapist and the patient be significantly threatened by this procedure but the patient's hopes for eventual improvement can very easily be damaged, if not destroyed, by such an experience. Further, his motivation to remain in treatment is often seriously diminished. Thus, the hearings process can, itself, have an anti-therapeutic effect upon the patient's mental status and well-being.

I believe our society has a responsibility to provide for those of its members who are truly unable to independently care for themselves. We are a civilized and sophisticated people. Despite current economic concerns we are, by world standards, a country wealthy in resources of all kinds, including human resources. As a humane society and as humane individuals we cannot abandon those among us who are in true need by virtue of a severe and chronic debilitating illness.

I hope I have clearly demonstrated that those people we call mentally ill do, in fact, suffer from a severe disease. It is a cruel, lifelong deteriorating process. It is not a matter of individuals with weak wills, poor characters or a desire to obtain advantages for themselves. The severe mental illnesses produce torment, fear and self-hatred. The illness robs its victims of life while they remain in life. It incapacitates them in many of life's most important areas of functioning, including employment and personal/social relationships.

Medical science, pharmacology and psychotherapy offer some help to these people. But we are currently unable to cure or restore a personality shattered by a psychosis.

Prior to the availability of medications which can help some patients in a limited way, we cared for the chronically mentally ill in institutional settings where they often remained for life. Now we have created a major social change vis-a-vis deinstitutionalization but with neither adequate plans nor the means to meet the needs of severely mentally ill people in the community. Their needs remain very real and very basic. It is inhumane to turn away from them because they are now quieted with medications, discharge them into communities with no, or inadequate, support systems, and allow them to suffer additional deprivations.

Social Security was not originally designed to respond to these particular problems and this particular patient population. However, it is the primary agency of our government which the chronically mentally ill are currently referred to for assistance in meeting their basic human needs for food, shelter and clothing. The Social Security Administration must become increasingly sensitive to, understanding of and responsive to the special characteristics and unique emotional, physical, social and medical needs of these chronically ill citizens. Our public officials and

representatives must assume a strong advocacy role in this regard if necessary changes in the present system are to be achieved in both an expedient and a humane manner.

I would like to close with two brief quotations. The first is by George Bernard Shaw who reminded us that, "The worst sin towards our fellow creatures is not to hate them, but to be indifferent to them. That is the essence of inhumanity."

Lastly, a short poem written by a schizophrenic patient.

"And is there anyone at all?

And is

There anyone at all?

I am knocking at the oaken door...

And will it open

Never now no more

I am calling, calling to you--

Don't you hear?

And is there anyone

Near?

And does this empty silence have to be?

And is there no one there at all

To answer me?

I do not know the road--

I fear to fall

And is there anyone

at all?"

Eithne Tabor from Freida Fromm-Reichman's last paper entitled, "On Loneliness"
(Referring to the loneliness of mental patients)

Thank you.

Senator BINGAMAN. Next, we're going to have a panel consisting of Clark De Schweinitz. Ray Fuller. Bob Jones. Emily Wise, and Lucy Lopez. And these people all are involved with legal services and are familiar with their cases through that involvement.

If they'll come forward, please? Clark, maybe you could figure out what order you folks would like to go in, and we're glad to hear whatever testimony you have.

TESTIMONY OF CLARK DE SCHWEINITZ, DIRECTOR, NORTHERN NEW MEXICO LEGAL SERVICES, ACCOMPANIED BY JUANITA SENA, STAFF PERSON, NORTHERN NEW MEXICO LEGAL SERVICES; RAY FULLER, MANAGING ATTORNEY, SOUTHERN NEW MEXICO LEGAL SERVICES, ACCOMPANIED BY BOB JONES, SOCORRO LEGAL SERVICES OFFICE, AND EMILY WISE, POLVADERA, NM; AND LUCY LOPEZ, CLOVIS LEGAL SERVICES OFFICE

Mr. De Schweinitz. Well, Senator, I'll be very brief and just introduce another staff person from our office, Juanita Sena, who is a paralegal in our office, and she, quite frankly, is indicative of the people who do the real work. I'm afraid I don't do that work.

I would point out just quickly for our program that governmental benefits, especially Social Security, are the highest priority that we have, and over the course of last year, 1982, there have been over 1,400 cases. Twenty percent of those cases are benefit cases. Over half of those are Social Security cases, and we have seen a tremendous increase in the cessation cases we've had in the last year and a half or two.

I'm going to have Mrs. Sena talk about some of the cases that she knows about, but I don't want to take up too much time because of the other programs. Our colleagues from the southern panel are here, and our colleagues from the Albuquerque program are here.

So I think we should give them a fair shake too, and I'll let Mrs. Sena talk a few minutes.

Senator BINGAMAN. Juanita, why don't you go ahead and tell us—that microphone there is the one that works the loudspeaker system, and then if you want to be on television tonight, pull up that channel 4 microphone.

Ms. SENA. I think, sir, to be short and brief, I'm going to give you just a real basic brief on the kind of Social Security people that we see.

First of all, for those of you who aren't familiar with Legal Services, we service very low-income people, and in our Santa Fe office it's mostly Hispanics with very little education, with no skills whatsoever; people that can't get out in the working world and be retrained for anything.

And these people have been on benefits for years and years. They've received notice of termination. They're frightened; they're scared. They go to our office and they're seeking help, and a lot of them or most of them, I would say they get worse instead of better.

Senator BINGAMAN. Where's your office, Juanita?

Ms. SENA. Well, we're located at 805 Early Street. We just moved there about 3 weeks ago.

Senator BINGAMAN. OK.

Ms. SENA. And a lot of the women have been housewives all their lives, were just at home bringing up their children. And one of my clients received notice that because she had done housework, meaning in her home, that she was capable of getting a job working at a hotel as a maid, when, in fact, she can't even move. She's very nervous and doesn't have money to go to the doctor.

She has a very bad left leg, almost crippled, and, you know, there's no way that she could get out and work. And some of the people, when they come to my office, say: "Well, you know, instead of being put through all this harassment," this lack of respect and demeaning of their self-esteem, they say they wish they could get out there and work.

And I have two cases that were different from most of my cases. I have one client who suffers from multiple sclerosis. He does have a very good education, but MS is a relapsing kind of illness. It's long term, but because they say that he's gone to a consultative examination, and he went on one of his good days, so Social Security has said: "Well, he's able to take a bath. He bathed this morning. He fed himself. He can get out and work."

They gave no consideration to the fact that this man has to lay down at least three or four times a day to keep his strength. And then I have another case and my client is with us. He has a history of a mental impairment. He also had an education. He's considered a young individual, but, again, he was not given consideration to his condition.

I'm not an authority on mental cases or mental impairments, but I've dealt with a lot of these cases, and on several occasions he's been in my office when he has a good day and we can deal and we can talk with what we need to say; and other times, you know, his mind is elsewhere. He can't cope with it.

He made an effort to go to work, but couldn't take it. He was there for a week and had to leave. And I think what would help a lot of our people in New Mexico, just to cut down on the suffering.

During January and March there was a pilot project, and the reconsideration-level clients were given the opportunity to go before a decisionmaker on a face-to-face evaluation, and that cuts down on the reconsideration, if they're still eligible, and I think that would—should go into effect soon to help a lot of our clients.

Senator BINGAMAN. You say that pilot project was in place from January to March?

Ms. SENA. Yes, sir.

Senator BINGAMAN. But it has not been since March?

Ms. SENA. I think back on June 7, Margaret Heckler, the Secretary, I think, put out a statement that they're going to implement it January 1984, but I'm not sure if it's going to be a permanent part of the Government. I think it's just going to be just—I guess on a trial basis again, or maybe on a trial basis for a longer period.

Senator BINGAMAN. All right. Thank you. Who would be next?

Mr. FULLER. I guess I would, Senator. Senator Bingaman, my name is Ray Fuller. I'm a managing attorney for Southern New Mexico Legal Services.

Senator BINGAMAN. Where is your office, Ray?

Mr. FULLER. My office is in Las Cruces. We have a number of individuals from our program here: Bob Jones, he's a paralegal at our office in Socorro; and he has brought a client of ours with us, Emily

Wise, who will also testify; and Lucy Lopez is a paralegal in our office in Clovis, and she will probably have a few brief comments. I'll try to keep my comments fairly brief, too.

We all know the horrors of people who have been cruelly and unnecessarily harassed in the application process, for those who are seeking Social Security benefits for the first time, and also in the review program, for those who have been on Social Security but are being subjected to this congressionally mandated review. And I believe that is because of the practices of the current Social Security Administration.

Our offices have been besieged by applicants and recipients of Social Security alike, the aged, the disabled, people who are handicapped, people who are sick, people who are marginal to our society. And these all are people who are, without any doubt, disabled, but all of whom have either been experiencing inordinate delays in the processing of their applications or who have been flatly refused benefits, despite their patent disability.

I would note that at the present time, Southern New Mexico Legal Services has a caseload of which SSI cases comprise 18 percent of the caseload, and Social Security title II another 5 percent.

In some offices, including the Southwest office which Bob is a representative of, that number approached 33 percent of our caseload dealing with Social Security cases, and this is really the tip of the iceberg. There are literally hundreds of other people who are out there suffering these same sorts of problems and who, for one reason or another, don't come in, either because they don't know we are available or because they simply gave up in the face of a very lengthy, a very negative type of operation being currently run by the Social Security Administration.

At a time in their lives when certainty and security are really all important to the elderly and the disabled, they are being forced into further uncertainty and insecurity, which is violative of the original intent for the establishment of the Social Security Administration, which provides maintenance, sustenance, and security for these very people.

Life would be difficult enough now for these people in the best of times, but right now these seem to be the worst of times for the disabled and the aged poor. And these times have been made that much worse by the Social Security Administration by their very insensitivity.

You've had the testimony of the representative from DDU that people from the very outset, from their very first contact with the Social Security Administration, are being treated unfairly. They're not given any benefit of any doubt. The standards have become almost insuperable for the vast majority of the Social Security claimants.

The next stage is that before the administrative law judge, and the Social Security applicant, or the recipient who has been reviewed and determined no longer disabled, faces a very uphill battle trying to prove his case. He effectively has the burden of proof before the administrative law judge.

Recently, we've encountered a problem which has further exacerbated all the other problems in the system. And this is where after the Social Security recipient or applicant has had his day in court, his only live hearing before an administrative law judge, he will receive fairly often a favorable decision from the administrative law

judge. Unfortunately, when everyone concerned believes that the case has been resolved, it goes to Washington and a bunch of bureaucrats on the Appeals Council in Washington will look at the written record, will completely reevaluate the evidence, will completely discount the testimony of the claimant for Social Security, and then will reverse or remand the case to the administrative law judge for another hearing.

We currently have five cases in litigation in which this has occurred, where the administrative law judge finally has been overturned by the Appeals Council in Washington. What is fundamentally unfair about this is that the Social Security applicant or recipient has gone to a live hearing in which his demeanor, his testimony, has been completely evaluated and fairly considered by an administrative law judge who is a part of the justice system established by Congress. However, when that record goes to Washington, DC, and goes before the Appeals Council for review of the judge's favorable decision, they don't have the benefit of any of that observation. They have a barebones written record and, very often, the Appeals Council seems to discount not only the testimony of the claimant, but also the evidence provided by the treating physician.

And at that point, very often the Appeals Council will reverse and remand the case to the administrative law judge who granted benefits to the claimant, and provide instructions to the administrative law judge to hold another hearing and issue a new decision. That has occurred in approximately three of these five cases.

And when the administrative law judge has the courage, the honesty, the integrity, to refuse to buckle under to the Appeals Council, the Appeals Council will, on its own, reverse the decision of the administrative law judge and issue its own final decision, which then has to be appealed to the Federal district court.

What is happening is that the Appeals Council feels that it is not under the strictures that the Federal reviewing court is, which is the substantial evidence test. The Appeals Council can simply rejudge, completely and independently review, and issue its own judgment. And that stands as the judgment of the Secretary of the Department of Health and Human Services.

Now, when we have to take that into the Federal district court, we have to overcome the substantial evidence test, which the Appeals Council never did. Essentially, what I'm appealing to is both your concerns as a Senator, a representative of the people, and also as an attorney, a representative of the system of justice, of which this administrative quasi-judicial activity is a part.

What is happening is that the administrative law judges are perhaps subtly, perhaps not so subtly, also being pressured into denying rightful Social Security beneficiaries. There are right now in place statistical analyses of the decisions of the administrative law judges.

As I understand it, under the guidelines prepared by the Secretary, if an administrative law judge issues more than 66 $\frac{2}{3}$ percent favorable decisions, he is automatically subjected to constant review and possibly to further personnel actions being taken against him.

There is a very considerable pressure being put on the administrative law judges to buckle under, to become rubber stamps for the decisions of the administrative system. My concern is that judges would no

longer be independent, that they would become the mere tools of the system, if the Social Security Administration has its way.

The administrative law judges would no longer see the persons before them, but they would see the statistics before their superiors in the administration. They would no longer consider the matters of individual cases independently, but they would weigh each case in relationship to some arbitrary percentage of favorable decisions and unfavorable decisions, as established by their administrative bosses.

A system of administrative justice, which is a true adjunct of our Federal judicial system, would be converted into a rubber stamp for administrative fiat, satisfying some percentage of "truly needy and disabled" that the administration deemed to set that year.

And I want to reiterate that it is fundamentally unfair to the Social Security recipients and applicants to have to go through years—literally years—of this trauma of going continuously through proceedings, waiting for decisions to be issued, waiting for those decisions to be overturned by the Appeals Council, and then being forced to go to the Federal court and then waiting for those judges, hopefully, to finally give them the justice which they should have received at the very outset of the process.

And I would, at this point, ask Bob Jones, our paralegal in the Socorro office, to add anything further.

Senator BINGAMAN. Bob, we're glad to hear your testimony.

Mr. JONES. I would, from personal experience, like to talk about—just set the scenario of what an initial applicant has to go through. Something happens in their life. They feel they need to apply for Government benefits in order to survive, so they apply. Where I'm from, which is some of the least populated counties—I represent Socorro, Sierra, and Catron Counties—they apply over the telephone to the Social Security Administration in Albuquerque, through the telephone and through the mail. And they deal with the claims representative in the Albuquerque office, who, from personal experience—most of those representatives have the opinion that applicants are trying to get free money from the Government.

They think that the person is trying to cheat the Government out of money. So most times these days, the initial application is denied. And then you go through the redetermination stage, where they go through the State disability determination unit.

In spite of what Mr. Fairbanks says about his trained adjudicators, through personal experience dealing with these people, I've seen the same attitude. You can tell from their tone of voice and the comments that they make that they see the applicant—the assumption is that the applicant is trying to cheat the Government out of money, and it just affects everything that goes on in their head.

I think it's their responsibility to seek complete medical evidence. They don't. They take handpicked doctors that they refer people to, and these doctors, I'm convinced, know that if they keep giving the claimant unfavorable reports, then the Social Security Administration will keep sending them customers.

And it's a good way to get easy money, because they do very cursory, very short examinations. They write negative reports, and if they do that, the free money keeps coming in. It's like it pays the rent or something.

And these doctors, you know, the adjudicators and the claims representatives should be on their own contacting the primary treating physicians, the initial diagnosticians. Instead the attitude is, "Well, their own doctor is good friends with the client, so they'll lie to us." I don't think that they should assume that doctors are going to do that.

Anyway, the redetermination stage that everyone is forced to go through is a sham. When I started working at Legal Services, I was told, "We don't accept clients until they're at the hearing stage, because there's no sense. There's nothing you can do at the redetermination stage. You tell them that they have to just wait. They're going to get denied again. There's no way it's going to be reversed."

When you go to the administrative law judge, that's when you have your first chance; that's the first time that somebody actually sees you. And the time that is required to go through this process just has a devastating effect on people's lives, both financially—I've seen people in danger of losing their home—and emotionally. I've seen people who may have had a physical problem, which is why they're going to seek benefits in the first place. By the time the process is completed, they're emotionally in such a state of depression that they're getting other symptoms, other illnesses that were caused by the system itself.

And at this point, I would like to introduce Miss Emily Wise, who is one of my clients, who's an initial applicant, currently at the redetermination stage.

Ms. WISE. First of all, I would like to say that I appreciate the efforts of the Legal Services. If it weren't for them, I wouldn't even know that I had the option to do anything except give up.

First of all, let me introduce myself. I'll be 41 in the next couple of months. I have three young children, and I've been a professional potter. I've been a gymnast. I've been a very physically active person all my life, and the last job I held was the job that I needed to terminate at the time that I was hospitalized last fall, which was at New Mexico Tech in Socorro.

I've had three abdominal surgeries, the last one ending up in a hysterectomy because of cancer. I've had two spinal surgeries, a laminectomy, and fusions.

Even in view of the fact that I've had problems, medical problems in the past, I'm a very level person and I've always sought to do things on my own. I've raised my kids by myself. I've worked very hard, very physically hard.

Last September, I was hospitalized because my legs turned black. I spent a total of 25 consecutive days in the hospital; many, many tests. Finally, a biopsy of some lesions on my left leg revealed that I have a blood disease called leukocytoplastic angitis, which is the white blood cells destroying each other and breaking down the various vessels and blood seeping through the vascular walls and collapsing them.

And I was immediately put on a program of heavy doses of steroids to attempt to arrest the disease. The vascular damage would remain, whatever it was at that time, even if it ceased right there.

I also suffer from an arthritis, which is going on in my foot, legs, and my hands. The steroids were not effective in terms of stopping the process of the disease. However, the steroids did have the effect of making me ache all over and my bones ache all the time. I am nauseated. I have diarrhea.

So that's in addition, now, to the problems that I started out with. When I got out of the hospital, I was in a wheelchair for about 3 months. I decided that a wheelchair was no place for me, and so I chucked the wheelchair and I've been getting around with the aid of two canes.

And when I was in the hospital, I was with a social worker who was very comforting. She told me that on the advice of my doctor who had told me to apply—to quit work before I had an embolism or before something else gave out—to apply for Social Security disability.

With her help, I did so, and I was very hopeful. Everybody was very hopeful. As Bob said, my initial contact with Social Security was a shock, because whereas I had thought these people were going to help me out, in fact I was getting all kinds of what I felt was harassment.

All of a sudden the burden of proof of responsibility of my illness was being put on my shoulders, when I had just spent 25 days in a hospital seeing a specialist making a determination and surely they could have been the ones who should have been contacted, and I didn't understand what I was being put through then, but I will go through that.

I'm going to go through their procedure, and ultimately, you know, in a couple months, then everything would work out. I had initially applied for a disability on November 9, 1982. I saw some doctors who determined that there was a possibility that I might have rheumatoid arthritis, although there was no proof. That's because they did a very cursory, incomplete, ridiculous examination.

They took a sample of blood and did a test for normal kinds of things. Although it had taken the people at Socorro General and St. Joseph's Hospital 25 days in blood tests many times to rule out—to finally in a biopsy—to finally come up with the diagnosis.

They took one blood sample and told me that my blood was normal and, therefore, my application for disability was going to be denied, and I should go back to work right away. So I understand that when you apply for Social Security disability, you must have proof of termination of employment, so you have to go through all the rigamarole. You must quit your job. You must stay not working during the entire process which you're applying for Social Security disability.

And it's mandatory, although I couldn't work anyway, even if I were able to do a minimal kinds of things, it's mandatory that I cannot work and while I made my application for Social Security disability.

I feel that, of course, I appealed the initial rejection, and it wasn't until halfway through my appeal that I was aware that Legal Services was there for me and Bob is the legal assistant there and has been extremely helpful. Everybody has, although nobody is making much headway, but at least somebody else is on my side.

Always the feeling of being intimidated and alone is paramount. One gets the very distinct feeling that Social Security is hopeful that you'll either commit suicide or just outright die before they get around to making a determination, and, as a matter of fact, I understand statistically that probably around—in about 50 percent of these cases that is the case.

People do die before there is—people who have made an application for disability die before anything has been determined, you know, for or against them, which is absurd. Even if, you know, it's a push on that, it's absurd.

I repeatedly asked Social Security to ask for my doctor's records, the hospital records. They told me that they wanted me to go to their doctors because they were afraid that my doctors would be prejudiced in my favor. These were doctors that were assigned to me in the hospital that I had no prior personal experience with that cold, objectively made a determination as to my case without having any personal interaction with me or very little.

And yet I was being treated like a criminal and my doctors were being treated with a great deal of suspicion. And the only, in fact, valid doctors were the doctors that they were sending me to, which included, by the way, a child psychiatrist, which I was told I had to—these are doctors that Social Security tells you you have to go to; otherwise, your application is apt to be denied; in fact, would be denied.

I had to suffer the intimidating, ridiculous attitude of a child psychiatrist who ultimately, you know, at the very end of the session said, "Well, you agree, then, that your problem is physical, rather than psychological?" You know, and I said, "You know, why am I here, then?"

Well, but you can't take issue with them, because then you're being argumentative and horrible, and they write up a bad review of you anyway. I got one decent doctor in the entire time I've been seen by Social Security disability determination type doctors.

It wasn't until Bob came into my situation that I was even able to get any information. I was not advised of my progress. I've been spending 1 year now. I had no income. Welfare will not touch me because I'm being considered by Social Security disability.

Through AFDC, I was able for a few months to get—to turn my \$170 child support payment over to AFDC and they added to that. They paid me another check which was \$189. I got \$19 from the State through AFDC. That was the only money that I was able to get at all.

I cannot make my mortgage payments, and I face losing my house. I'm at the brink of losing everything in my entire life that I have worked for. And I don't understand why. We, the people are told to believe in a governmental system that is fair to all, and then because I have all my life, rather than applying for welfare when I could have with regard to my children, I have worked on my own.

I do not wish to be in this position, but I have been put in the position, and I've been punished because I am sick, you know. I don't understand why am I just—nothing is happening. Still nothing's happening. I'm still in the redetermination process and, as I said, it started disabled—before Bob came into my situation, no one would even give me any information.

Finally, after all kinds of inquiries, he found out that my case had been sent to Dallas, and we still don't understand why. It took quite awhile to get back from Dallas, and then I was to see some more doctors after that. And after my last visit with a doctor, I have had no word. Nobody tells me anything. It's still nothing is happening.

Senator BINGAMAN. Let me just ask: Where do you live? Where's your home?

Ms. WISE. In Polvadera. It's about 12 miles north of Socorro. Senator BINGAMAN. In Polvadera? And when did you first make a formal application for—

Ms. WISE. November 9, 1982.

Senator BINGAMAN. Of 1982? And, Bob, you said that she's now in the redetermination process. She was turned down the first time?

Ms. WISE. My initial application was denied March 2, 1983. It's taken since March until right now, and I'm still in the redetermination stage, and we're still—

Mr. JONES. And I would like to add one thing: It may be my fault that this is taking so long, because I assumed that with Emily's diseases and arthritis and her blood disease and everything, I couldn't believe that the disability determination people, if they were really doing their job, hadn't seen those diagnoses.

So I called the DDU and talked to an adjudicator, and I—when you're denied, they tell you what basis, what reports they used to base their denial on. And I noticed that they never had a report from the physician who had diagnosed the blood disease.

So I asked him: "Do you have that report?" The adjudicator told me that that doctor's report was part of the hospital reports. I said, "I don't think that the doctors, when they're doing a hospital summary, go into it very completely. They're just trying to get home from work," and I said, "Can you call him and ask him for a complete report?"

It was like I was giving him extra work to do. "Well, I suppose I can call them," and I said "There was another doctor that was involved in it," and he didn't want that doctor's name.

But, apparently, they must have gotten a report from that doctor that caused them to send this thing to Dallas. It just so happens that the claims representative who was initially on this case—I know her personally, so I was going through her, rather than these DDU people, and she's the one that found out.

Well, they sent it to Dallas. Why? Because they didn't want to make the decision. They had to send it to their policy office in Dallas. It comes back from Dallas several weeks later with no decision still.

They sent Emily to a neurologist, and that was what Dallas told them: "Send her to a neurologist." What a neurologist has to do with this, I have no idea, but she's been to the neurologist now, and there's no results yet, and that's been about a month ago.

Ms. WISE. One of my main problems now is that in addition to all of the rest of this, my daughter is a senior in high school, is involved in a program she gets one credit for working in class and one credit for outside work on the job. And she needs that second credit in order to graduate.

And so now that she's working, I can no longer get my \$19 a month through AFDC, plus I cannot get medicaid. I have no medical coverage. I cannot see my treating physician. I have no money to get to Albuquerque. I'm 75 miles south of Albuquerque, which is, you know 150 miles round trip.

And every time they tell me that I have to go to the doctor. I have to find somebody else to take me up there and pay for my trip since I have no money to get up there.

Senator BINGAMAN. Thank you very much for that testimony. Lucy, did you want to testify on some aspect of this same problem?

Ms. LOPEZ. It's generally the same, what I have seen. I have represented numerous clients at their Social Security hearing. People are being terminated without regard to the actual condition of the client.

The only evidence that Social Security obtains on the condition of the client is the doctor's report that they send them to. For instance, these doctors give clients summary examinations and opinions without even consulting the doctors that have actually treated the client.

The disability determination unit gives more weight to the opinion of their doctors than the treating physician. Doctors that treat these clients often treat them in a rude way, telling them or accusing them of being a burden on society.

For example, I have this client that I represented. He's age 57. He has been on disability since 1969 for a mental condition. He goes to his DDU doctor's appointment because they're terminating his benefits. I will quote from the doctor's report what he said: "I accept the fact, the opinion that this fellow is crazy. However, I get the feeling he is crazy like a fox and has outwitted the system." That's what I read, and I quote.

The people are needlessly put through this process, and it's difficult to get a resolution to these matters in the rural area. So I don't know what has to happen with some of our clients then.

Senator BINGAMAN. OK. Let me just ask: Bob, have you been in touch, or any of you on Emily's case, with our Albuquerque office?

Mr. JONES No.

Senator BINGAMAN. Why don't you, if you could before you leave today, talk to Elizabeth Gallegos, who is in the back of the room there, and maybe just give her the facts on this and see if there's anything we can do to help you.

Mr. JONES. It's not the only one, Senator.

Senator BINGAMAN. Well, we're here to help on any of them. We already have a great many cases in our office, and we're glad to have more if we can be helpful.

Mr. JONES. Thank you.

Mr. FULLER. Senator Bingaman, I would note that Senator Domenici obviously has been very cooperative on a number of these cases, but, again, it has not been with a whole lot of effect. We've even had one instance where a request was made to Senator Domenici's office to come to the Social Security Administration hearing to provide translation services for one of our Spanish-speaking clients.

In addition, I believe Bob had a client for whom he had to, out of his own pocket, pay for the translating services, because Social Security would not do its job, which is to provide the basic assistance necessary to have a complete record.

That really indicates the attitude, the hostile attitude, of this Social Security Administration to the people who really are dependent upon them.

Thank you, Senator.

Senator BINGAMAN. OK. Ray, I think you're suggesting that we have a change in the law that essentially requires that if an administrative law judge is overruled, he has to demonstrate that he did not have substantial evidence on which to base a decision, the same kind of substantial evidence standard of review that would apply to most judicial decisions; is that right?

Mr. FULLER. Yes, Senator. I think that's the first step. For most cases, that is possible, but it goes beyond that. We have any number of these cases where the Appeals Council even now is violating its own rules. For example, they will issue a reversal after the period for them to take action has expired, which is 60 days.

They will go beyond that 60-day period, and I believe it's been successfully challenged in court in other places at other times, and we will be doing the same. But what concerns me is all the unrepresented people, the people that don't have lawyers and for some reason fall through this crack in the system.

They're being shortchanged. Their lives are being ruined, and it's being done needlessly and unlawfully.

Thank you, Senator.

Senator BINGAMAN. Thank you all. Let me just say—and I should say this for Dr. Morrison and anybody else who has testified: If you have statements that you would like to have included in the record that you don't get a chance to give word for word, if you provide us with those we'll see to it that they are printed and become part of this record, even though you have not gone through them orally.

So you don't need to say everything that was in your statement, and I notice you were skipping over some of the materials you had, Dr. Morrison. We appreciate very much the testimony. Thank you.

We have one more panel which we will go through before we break for lunch. On this panel is Michael Schwarz, who is an attorney here in Santa Fe; and Jeff Diamond, an attorney from Carlsbad.

You folks are welcome, and we look forward to your testimony. You can go in whatever order you'd like.

**TESTIMONY OF JEFF DIAMOND, ATTORNEY, CARLSBAD, NM; AND
MICHAEL SCHWARZ, ATTORNEY, SANTA FE, NM**

Mr. DIAMOND. Thank you, Senator. Senator, I want to thank you very much for your compassion, the compassion that you're showing to the people of New Mexico and to the United States in taking the time and trouble to hold these hearings. It's a long overdue matter here in the State of New Mexico.

My name is Jeff Diamond. I'm an attorney at law from Carlsbad. I'm also, coincidentally, chairman of the Eddy County Democratic Party, and I'm also a past president of our Eddy County Mental Health Association, so I'm familiar with many of the issues that have been raised today.

Senator, Carlsbad and Eddy County and the southeastern portion of the State are very heavily involved in the mining and extractive industries, potash, oil, and gas in particular.

My experience as a member of the private bar has been with industrial workers who have engaged in heavy-duty occupations all their lives, and we're seeing in Carlsbad and throughout the southeastern portion of the State—and I'm sure the same is true in Silver City and the other mining area of the State—where, routinely, left and right, men and women who are close to what is considered an advanced age in their late forties or early fifties, who have worked in many cases for 30 or more years in the extractive industries, routinely have been denied Social Security disability benefits on the initial go-

around and subsequently have had their benefits cut off by cessation proceedings.

One of the problems that we notice is a problem at the local Social Security office. We feel—and it's mandated by law—that the local Social Security office has an obligation to the people who come in inquiring about Social Security benefits to assist them in going through the application procedures.

I feel it's a very positive step of your committee and Congress should mandate a change in the application forms that are used at the very beginning of the procedure. The applications call for extensive narrative reports by disability claimants.

Unfortunately, we're seeing men who have engaged in work involving shoveling potash for 5 years before they advance to other grades of heavy employment describing their occupational background simply as "miner." They're not being asked any questions. They're not being assisted in fully and completely describing the details of their employment.

They're asked to describe in a narrative form, "Tell us about your disability." In that situation, Senator, they're saying, "I hurt my back," instead of being able to elucidate on what specific problem they've got. Unfortunately, the answers that are given are only expanded in the time of the hearing before an administrative law judge of the Office of Hearings and Appeals.

So we feel that Social Security employees at the local level should assist these applicants in thoroughly completing their information, giving the Administration the whole truth, as much detail as possible about their disability.

We're finding that there is a tremendous amount of pressure on administrative law judges; that they are being compelled through threats of job actions against them to overschedule hearings. Where some days 20 or more hearings before an administrative law judge are held, it necessarily prevents the administrative law judge from hearing in detail the full complaints, problems, employment background, course of medical treatment of the disability claimant.

The judges become very snappy and they need to get through this tremendous docket that they've got, and we feel that there should be some protection for the administrative law judges, and we support the law currently filed by the Association of Administrative Law Judges against the Secretary of the Department.

There is a shortage of administrative law judges. They're being compelled to disallow an "x" number of quota of Social Security benefit claims. We feel that there's an attack now—and the only protection that these claimants have is being able to go out and get an attorney, which is through legal aid or through the private bar—and those attorneys are being compensated through the attorney provisions which allow an attorney to recover up to 25 percent of the accrued unpaid benefit of that benefit being withheld, subject to approval by the judge for payment to the attorney representative.

There's an attack now to eliminate—to deregulate the attorney fee provisions, to prevent attorneys from being adequately compensated to look out for the rights of claimants. There is also a move afoot to—well, with the cessation proceedings, while a person continues to receive benefits, they very often don't have the resources to hire an at-

torney, and there's no provision made for the payment of attorney fees.

We feel that Congress should allow attorneys, whether they're legal aid or private attorneys, who successfully represent people who receive notice of cessation, to be paid an attorney fee from the Administration. The Administration should be charged with attorney fees for unsuccessfully contesting a person's disability; that would be a good sanction and that would work to eliminate many of the problems we're talking about today.

Those are just a few of the things of many of the issues that you've gone into this morning that are dispositive of what my testimony before you today would be. I would like to compliment the corps of administrative law judges that serve the people of New Mexico out of the office in Albuquerque. They're a good group, and I know Judge Falvey will be here later this afternoon, and he will more articulately express the position of the administrative law judges on the matters I've raised.

Thank you, Senator.

Senator BINGAMAN. Thank you very much, Jeff. That's good testimony. We appreciate it very much.

Michael.

Mr. SCHWARZ. Thank you, Senator. Ladies and gentlemen: It is my pleasure to appear before the subcommittee to give testimony on the Bellmon amendment and on the Doctrine of Non-Acquiescence.

I have 8 years' experience with the Social Security claims, as a paralegal, academic, and lawyer. For my advanced degree in law, I wrote my dissertation on comparing the disability adjudication processes between the United States and Great Britain. I have represented claimants in well over 100 evidentiary hearings before administrative law judges and have written several articles on Social Security adjudications.

According to my understanding, the Bellmon amendment was passed based on wide variance in the reversal rates in ALJ's and the high reversal rates of the State agencies. The underlying fear is that ALJ's are too liberal in granting benefit, and the Appeals Council must make sure that only claimants who are truly disabled receive benefit, and so the Bellmon amendment became law.

It requires the Appeals Council to review a certain percentage of favorable ALJ determinations. While the intent to prevent unworthy recipients from receiving benefits is indeed laudable, its actual implementation is suspect.

In my testimony today I wish to address three aspects of the Bellmon amendment: First, the review process before the Appeals Council; second, the delay in payment to claimants; and, finally, the detrimental effect it has on private lawyers.

The review process: There are two ways a case reaches the Appeals Council. One is where the ALJ renders an unfavorable decision and the claimant appeals. The other, under the Bellmon review, where the Appeals Council *sua sponte* initiates review.

Although Commissioner Hayes is quite correct in saying that the Appeals Council reviews more ALJ decisions which are not favorable to the claimant than those that are, the Commissioner is incorrect with respect to his assertion that the system favors the claimant.

It is respectfully submitted that the level of scrutiny is different from the Bellmon review claims than for the claimant who initiates review. Under the Bellmon review, the Appeals Council reevaluates the case from the beginning. It is de novo. In the claimant appeal, the Appeals Council reviews the case as would the appellate court; that is, substantial evidence, arbitrary capriciousness, error in law, or broad public policy.

And I wish to correct the man from Southern New Mexico Legal Services, because it is supposed to be like an appellate court under 20 CFR 404.970(a), *Apodaca v. Heckler* case filed in New Mexico, as well as *Garcia v. Heckler*, another case filed in New Mexico.

The Government has taken the position that the Government appeals under the Bellmon amendment de novo. Thus, where there is a conflict of evidence where the ALJ decides in favor of the claimant, the Appeals Council may reverse or remand. In the other situation, the Appeals Council affirms.

I wish to call the Senator's attention to Social Security ruling 82-13, which provides that review under the Bellmon amendment would be the same as 20 CFR 404.970(a), which is the substantial evidence test. In fact, it isn't being applied. They're ignoring their own regulations.

It is thus unfair to claimants. I am fairly certain that the Appeals Council does not listen to the tapes of the ALJ hearings. The Appeals Council seldom sees the claimant personally. The Appeals Council most likely only reviews the ALJ decision itself and the documents admitted into evidence. The testimony of the claimant, the witnesses, including medical doctors who attend the hearings, and the oral argument by counsel is not taken into consideration.

Thus, all the advantages of a person-to-person hearing are lost at the Appeals Council. Moreover, the expertise of the ALJ is ignored.

The Bellmon amendment is predicated upon the assumption, perhaps false, that the State agency's determinations are correct and the ALJ's are not. Please note that ALJ's are lawyers with several years' standing in personal injury law. They are dedicated, as evidenced by their tenure as compared to those who are employed by the agencies, as shown by their high turnover rates, and I refer you to a GAO report.

In addition, it is different standards for reviews. ALJ's are encouraged to deny clients. ALJ's are under a quota system. They must process a certain number of cases within a month or face punitive measures. These include actions of removal.

Affixed to my statement, Senator, are actual letters of removing or seeking removal of ALJ's. It is easier to deny claims. And, again, I give you an article from the New York Times indicating this.

ALJ's simply accept consultative examinations which are invariably conducted quickly and not thoroughly. Again, a GAO report indicating that this is so. Since the scrutiny review is different for unfavorable decisions, the ALJ's are able to meet their quotas.

My understanding is that remands do not count. So an ALJ who favorably decides a claim that is reviewed and remanded by the Appeals Council has an increased workload. ALJ's are therefore encouraged to deny claims. Furthermore, ALJ's who decide cases favorably to claimants face closer review than those who do not.

Commissioner Hayes said that ALJ's who have high reversal rates are reviewed more often than ALJ's who do not.

Benefit delays: The Bellmon review process delays payment of benefit to claimants. Since the Appeals Council has 60 days to review a favorable decision, the benefit payment process is delayed by 60 days. My experience indicates that it takes Social Security 4 to 6 weeks after the 60 days to commence payment.

The result: The claimants must wait 3 to 4 months before they are paid. When the benefit is the only source of income, which is more often the case than not, the delay unduly hurts the claimants.

Not only does the Bellmon review process delay payment of benefits to claimants, it also delays it to lawyers. Lawyers must wait an average of 1 to 2 months after the claimant has received the benefit to get paid. If I were to pay my debts 5 to 6 months after they were due, my creditors would not be pleased.

Lawyers have three solutions to this problem: One, they can pad their hours, which is fraudulent and unethical. Two, they can refuse to handle Social Security cases. Three, they can seek change in the payment procedure.

Lawyers have proven their invaluable service to claimants in disability cases. Claimants who are represented by counsel have a superior advantage over those who are not. Lawyers must get the necessary medical evidence showing a claimant's entitlement to benefit.

It is clear that Social Security does not take the time and patience to do this. It is without prompt payment I fear that many members of the bar would forego representing Social Security claimants.

The Doctrine of Non-Acquiescence: The Social Security Administration made it clear that they will not follow judicial precedent that is contrary to their policy, and I refer you to a Social Security ruling 82-10(c). The Administration will follow the court's ruling for that particular case only. They will also abide by U.S. Supreme Court decisions.

This is called the Doctrine of Non-Acquiescence. The underlying justification for this policy is the Administration cannot administer the program when there is a conflict in the circuit courts of appeal. At first glance, this seems acceptable. However, upon further reflection, it undermines the Constitution by obviating article 3. Why should the Social Security Administration be treated differently? Why are they above the law?

The Social Security Administration should appeal unfavorable court decisions like everyone else. To permit other ways only denigrates the rights of the people vouchsafed in the Constitution.

I make the following recommendations, Senator: One, mandate equal treatment in the Bellmon review process. All cases appearing before the Appeals Council ought to be reviewed in accordance with 20 CFR 404.970(a).

The Appeals Council shall not conduct a de novo review. They should review cases as if they were in appellate court. Conflicts in evidence, credibility of witnesses, et cetera, should be resolved by the fact finder; that is, the ALJ. ALJ findings should not be disturbed unless not supported by the doctrine of substantial evidence.

Two, the Social Security Administration shall not interfere with the independent decisionmaking process of ALJ's. The imposition of quotas encourages unfavorable decisions. Our Federal judges are not under a quota system. Why should ALJ's be?

Three, when the ALJ issues a favorable decision, benefit and attorney's fees should be paid forthwith. This is with the understanding that these benefits and attorney's fees might have to be repaid, and there is an overpayment procedure already in effect for benefits that are overpaid.

Four, Congress should expressly outlaw the Doctrine of Non-Acquiescence. The Social Security Administration should follow court precedent. If the Administration disagrees with the court's decision, they should appeal.

I want to thank you, Senator, for allowing me this opportunity to share with you my thoughts on this troublesome subject. I sincerely hope that Congress will take the necessary steps.

And if any further particulars are required, please do not hesitate to contact me. I have enclosed documents supporting the statements and citations as authority for my position.

Senator BINGAMAN. Thank you very much, Michael. That was excellent testimony and obviously well researched and thought out. I appreciate both of you gentlemen testifying, and I appreciate your extensive experience in this area. We may well be contacting you again, when we get some specific proposals in the form that we can propose to the Congress.

Thank you very much.

Mr. SCHWARZ. Thank you, Senator.

[The prepared statement of Mr. Schwarz, with attachments, follows:]

PREPARED STATEMENT OF MICHAEL SCHWARZ

Mr Chairman, Senators, Ladies and Gentlemen: It is my pleasure to appear before this Subcommittee to give testimony on the Bellmon Amendment, 42 U.S.C. §421 note 1, and on the Doctrine of Non-Acquiescence.

I have 8 years experience with social security claims as a paralegal, academic and lawyer. For my advanced degree in law, I wrote my dissertation on comparing the disability adjudication processes between the United States and Great Britain. I have represented claimants in well over 100 evidentiary hearings before administrative law judges (ALJs) and have written several articles on social security adjudications.

A. Bellmon Amendment

According to my understanding, the Bellmon Amendment was passed based on the wide variance in reversal rates among ALJs and the high reversal rates of state agencies. Conference Rep No 96-944, 96th Cong 2d Sess 257-59 (13 May 1980), reprinted in 1980 U S Code & Ad News 1277, 1392, 1405-09. The underlying fear is that ALJs are too liberal in granting benefit, and the Appeals Council must make sure that only claimants who are truly disabled receive benefit. And so, the Bellmon Amendment became law. It requires the Appeals Council to review a certain percentage of favourable ALJ determinations.

While the intent to prevent unworthy recipients from receiving benefit is indeed laudable, it's actual implementation is suspect. In my testimony today, I wish to address three aspects of the Bellmon Amendment: first, the review process before the Appeals Council, secondly, the delay in payment of benefit to claimants, and finally, the detrimental effect it has on private lawyers.

1. Review Process.

There are two ways a case reaches the Appeals Council. One is where the ALJ renders an unfavourable decision and the claimant appeals; the other is under the Bellmon review, where the Appeals Council, sua sponte, initiates

review.¹ Although Commissioner Hayes is quite correct in saying that the Appeals Council reviews more ALJ decisions which are not favourable to the claimant than those that are, Oversight of Social Security Disability Benefits Terminations: Hearings before the Subcommittee on Oversight of Governmental Management of the Senate Subcommittee on Governmental Affairs, 97th Cong, 2d Sess 31-32 (1982), the Commissioner is incorrect with respect to his assertion that the system favours the claimant.

It is respectfully submitted that the level of scrutiny is different for Bellmon review claims that for the claimant who initiates review. Under the Bellmon review, the Appeals Council re-evaluates the case from the beginning. It is de novo. In the claimant appeal, the Appeals Council reviews the case as would an appellate court, i.e., substantial evidence, arbitrary and capricious, error in law or broad public policy issue. 20 CFR 404.970(a).

In Apodaca v Heckler, No 83-0789(C) (D NM case filed 11 May 1983) and Garcia v Heckler, No 83-0912 (HB)(D NM case filed 2 June 1983), the Government takes the position that the Appeals Council reviews under the Bellmon Amendment de novo. Thus, where there is a conflict of evidence in which the ALJ decides in favour of the claimant, the Appeals Council may reverse or remand. In the other situation, the Appeals Council affirms. Compare Social Security Ruling 82-13 providing the review under the Bellmon Amendment will be the same as 20 CFR 404.970(a).

This is unfair to claimants. I am fairly certain that the Appeals Council does not listen to the tapes of the ALJ hearings. The Appeals Council seldom sees the claimant personally. 20 CFR 404.976(c). The Appeals Council most likely reviews only the ALJ decision itself and the documents admitted into evidence. The testimony of the claimant, witnesses (including medical doctors

¹ The Appeals Council under 20 CFR 404.969 and 404.970 reserved the right to review cases before enactment of the Bellmon Amendment. Congress concluded that this review process was not utilised enough.

who attend the hearings) and oral argument by counsel is not taken into consideration. Thus, all the advantages of a person to person hearing are lost at the Appeals Council. Moreover, the expertise of the ALJ is ignored. The Bellmon Amendment is predicated upon the assumption (perhaps false) that the state agencies' determinations are correct and the ALJs' are not. Please note that ALJs are lawyers with several years' standing in personal injury law. They are dedicated as evidenced by their tenure as compared to those who are employed by the state agencies as shown by their high turnover rate. See GAO Report, The Social Security Administration Should Provide More Management and Leadership in Determining who is Eligible for Disability Benefits (HRD 76-105).

In addition to the different standards of review, ALJs are encouraged to deny disability claims. ALJs are under a quota system: They must process a certain number of cases within a month or face punitive measures. These actions include removal. See Appendix I. It is easier to deny claims. See Appendix II. ALJs simply accept the consultative examination, which is invariably conducted quickly and not thoroughly. See GAO Report, Controls Over Medical Examinations Necessary for the Social Security Administration to Better Determine Disability (HRD 79-119). Since the scrutiny of review is different for unfavourable decisions, the ALJs are able to meet their quotas. My understanding is that remands do not count. So an ALJ who favourably decides a claim that is reviewed and remanded by the Appeals Council has an increased workload. ALJs are, therefore, encouraged to deny claims.

Furthermore, ALJs who decide cases favourably to claimants face closer review than those who do not. Commissioner Hayes said that ALJs who have high reversal rates are reviewed more often than other ALJs. Oversight of Social Security Disability Benefits Terminations, *supra* at 31.

///

2. Benefit Delays.

The Bellmon review process delays payment of benefit to claimants. Since the Appeals Council has 60 days to review a favourable decision, 20 CFR 404.969², the benefit payment process is delayed by 60 days. My experience indicates that it takes Social Security 4-6 weeks after the 60 days to commence payment. The result: Claimants must wait 3-4 months before they are paid.³ When the benefit is the only source of income, which is more often the case than not⁴, the delay unduly hurts claimants.

3. Detrimental Effect on Private Lawyers.

Not only does the Bellmon review process delays payment of benefit to claimants, it also delays payment to lawyers. Lawyers must wait an average of one to two months after the claimant has received benefit to get paid. If I were to pay my debts 5 to 6 months after they were due, my creditors would not be pleased.

Lawyers have three solutions to this problem. One, they can pad their hours, which is fraudulent and unethical. Two, they can refuse to handle social security cases. Three, they can seek change in the payment procedure.

Lawyers have proven their invaluable service to claimants in disability cases. Claimants who are represented by counsel have a superior advantage over those who are not. Lawyers muster the necessary medical evidence showing a claimant's entitlement to benefit. It is clear that Social Security does not take the time and patience to do this. Without prompt payment, I fear that many members of the Bar would forego representing claimants.

²I have heard from other members of the Bar throughout the United States that the Appeals Council is getting around this 60 day rule by holding it is a "reopening". See 20 CFR 404.987 et seq.; see also proposed rule on reopenings at 48 FR 35135 et seq (1983), reprinted in 2 Social Security Reporting Service Rg 506-12 (Sept 1983).

³An exception is cessation of benefit cases. When a claimant is already receiving benefit and is notified of the proposed termination, the claimant

may request benefit be paid until the ALJ renders an unfavourable decision.

⁴Mathews v Eldridge, 424 U.S. 319, 349 (1976)(Brennan, J., dissenting).

B. Doctrine of Non-Acquiescence

The Social Security Administration has made it clear that they will not follow judicial precedent that is contrary to their policy. E.g., Social Security Ruling 82-10c. The Administration will follow the court's ruling for that particular case only. They will also abide by United States Supreme Court decisions. This is called the Doctrine of Non-Acquiescence.

The underlying justification for this policy is the Administration can not administer the programme when there is a conflict in the circuit courts of appeals. At first glance this seems acceptable. However, upon further reflection, it undermines the Constitution by obfuscating Article III.

Why should the Social Security Administration be treated differently? Why are they above the law?

The Social Security Administration should appeal unfavourable court decisions like everyone else. To permit otherwise only denigrates the rights of the people vouchsafed in the Constitution.

C. Recommendations

I recommend the following:

1. Mandate equal treatment in the Bellmon review process. All cases before the Appeals Council ought to be reviewed in accordance with 20 CFR 404.970(a). The Appeals Council should not conduct a de novo review; they should review cases as if they were an appellate court. Conflicts in evidence, credibility of witnesses, etc should be resolved by the fact finder, i.e., the ALJ. ALJ findings should not be disturbed unless not supported by the doctrine of substantial evidence.⁵

⁵Richardson v Perales, 402 U.S. 389 (1971)(what a reasonable mind would accept as adequate to support the conclusion)

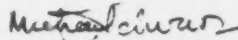
2. The Social Security Administration should not interfere with the independent decision-making process of ALJs. The imposition of quotas encourages unfavourable decisions. Our federal judges are not under a quota system.

3. When the ALJ issues a favourable decision, benefit and attorney fees should be paid forthwith. This is with the understanding that these benefits and attorney fees might have to be repaid.

4. Congress should expressly outlaw the Doctrine of Non-Acquiescence. The Social Security Administration should follow court precedent. If the Administration disagrees with a court decision, then they should appeal.

I want to thank you Mr Chairman and Senators for allowing me the opportunity to share with you my thoughts on this troublesome subject. I sincerely hope that Congress will take the necessary steps. If further particulars are required, please do not hesitate to contact me.

Respectfully submitted



MICHAEL SCHWARZ
Attorney & Counsellor at Law
P O Box 713
Santa Fe, NM 87504
505/988-2053

DEPARTMENT OF HEALTH & HUMAN SERVICES

Refer to: SGA4

Office of Hearings and Appeals
PO Box 2518
Washington DC 2001

APPENDIX I

APR 20 1982

CERTIFIED MAIL - RETURN RECEIPT

Mr. Robert E. Taylor
Office of the Secretary
Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

Dear Mr. Taylor:

The Office of Hearings and Appeals of the Social Security Administration (hereinafter referred to as OHA) proposes to remove Stanley M. Balaban (hereinafter also referred to as the employee), an administrative law judge in OHA appointed pursuant to 5 U.S.C. 3105. In accordance with 5 U.S.C. 7521 and the regulations promulgated pursuant thereto, this matter is referred to the Merit Systems Protection Board to determine if there is good cause for the removal of the employee for inefficiency. The charge against the employee is as follows:

CHARGE

Mr. Balaban's productivity level is, and has been for some time, unacceptably low. This inefficiency on the part of the employee in the conduct of his official duties, resulting from his failure to increase his output to a minimally acceptable level of productivity, has contributed to undue delays experienced by claimants awaiting a hearing decision under section 205(b) of the Social Security Act and is detrimental to the efficiency of the service.

SPECIFICATIONS

1. Mr. Balaban, an employee assigned to OHA's Long Beach, California Hearing Office has been repeatedly counselled formally and informally on improving his production.
2. On or about May 11, 1981, Chief Administrative Law Judge Philip T. Brown officially notified Mr. Balaban that during calendar year 1980, his performance was markedly subaverage. The employee was requested to improve his productivity and to advise the Regional Chief Administrative Law Judge of what assistance he needed to significantly improve his performance.
3. A review of employee's past production shows that for fiscal year 1980, employee issued 218 final dispositions, averaging 18.2 dispositions per month. The average production for all OHA administrative law judges who were on duty during fiscal year 1980 was 360 dispositions, an average of 30 dispositions per month.

Page 2 - H. Robert E. Taylor

4. Specifically, the employee's monthly production for the fiscal year 1980 was as follows:

<u>MONTH</u>	<u>TOTAL DISPOSITIONS</u>
October	19
November	14
December	14
January	14
February	14
March	26
April	21
May	13
June	21
July	24
August	18
September	18
	<u>218</u>

5. For the fiscal year 1981, employee issued 134 final dispositions, averaging 15.3 dispositions per month. The average production for all OHA administrative law judges who were on duty during fiscal 1981 was 383 dispositions, an average of 32 dispositions per month.

6. Specifically employee's monthly production for fiscal year 1981 was as follows:

<u>MONTH</u>	<u>TOTAL DISPOSITIONS</u>
October	19
November	16
December	13
January	17
February	17
March	13
April	13
May	11
June	19
July	19
August	7
September	20
	<u>184</u>

7. Mr. Salaban's production thus far in fiscal year 1982, as indicated below, shows no improvement:

<u>MONTH</u>	<u>TOTAL DISPOSITIONS</u>
October	21
November	14
December	7
January	14
February	10

Page 3 - Mr. Robert E. Taylor

8. In addition to his failure to dispose of a minimally acceptable number of cases, the employee has also failed to carry a minimally acceptable workload.

9. Mr. Balaban's annual average monthly pending for fiscal year 1980 was 82. The annual average monthly pending for all administrative law judges during fiscal year 1980 was 155.

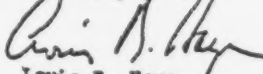
10. Mr. Balaban's annual average monthly pending for fiscal year 1981 was 71. The annual average monthly pending for all administrative law judges during fiscal year 1981 was 178.

11. Mr. Balaban's inability or unwillingness to maintain a workload comparable to that of his peers places an unfair, unwarranted burden on the other administrative law judges and delays processing of all social security claims within the hearing office.

12. Mr. Balaban's performance as set forth above constitutes an unacceptably low level of efficiency and productivity for an administrative law judge in OHA.

This letter of charges initiating removal proceedings is submitted for your action pursuant to 5 C.F.R. 1201.134.

Sincerely yours,



Louis B. Hays
Associate Commissioner
Office of Hearings and Appeals

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Refer to: SGA4

Office of Hearings and App
PO Box 2518
Washington DC 20013

May 7, 1982

CERTIFIED MAIL - RETURN RECEIPT

Mr. Robert E. Taylor
Office of the Secretary
Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

Dear Mr. Taylor:

The Office of Hearings and Appeals of the Social Security Administration (hereinafter referred to as OHA) proposes to remove Irving Shore (hereinafter also referred to as the employee), an administrative law judge in OHA appointed pursuant to 5 U.S.C. 3105. In accordance with 5 U.S.C. 7521 and the regulations promulgated pursuant thereto, this matter is referred to the Merit Systems Protection Board to determine if there is good cause for the removal of the employee for inefficiency. The charge against the employee is as follows:

CHARGE

Mr. Shore's productivity level is, and has been for some time, unacceptably low. This inefficiency on the part of the employee in the conduct of his official duties, resulting from his failure to increase his output to a minimally acceptable level of productivity, has contributed to undue delays experienced by claimants awaiting a hearing decision under section 205(b) of the Social Security Act and is detrimental to the efficiency of the service.

SPECIFICATIONS

1. Mr. Shore, an employee assigned to OHA's San Francisco, California Hearing Office, has been repeatedly counselled formally and informally on improving his production.
2. On or about May 11, 1981, Chief Administrative Law Judge Philip T. Brown, officially put the employee on notice that his performance during calendar year 1980 was subaverage. Mr. Shore was reminded that during this period, his productivity was well below that of his peers and he was asked to effect substantial improvements in the future. He was requested to advise the Regional Chief Administrative Law Judge of what assistance he needed to improve his performance.
3. A review of employee's past production shows that for fiscal year 1980, Mr. Shore issued 145 final dispositions, averaging 12.1 dispositions per month. The average production for all OHA administrative law judges who were on duty during fiscal year 1980 was 360 final dispositions, an average of 30 dispositions per month.

Page 2 - Mr. Robert E. Taylor

4. Specifically, Mr. Shore's monthly production for fiscal year 1980 was as follows:

<u>MONTH</u>	<u>TOTAL DISPOSITIONS</u>
October	13
November	13
December	12
January	4
February	16
March	10
April	15
May	15
June	13
July	12
August	13
September	9
	<u>145</u>

5. For fiscal year 1981, Mr. Shore issued 147 final dispositions, averaging 12.3 dispositions per month. The average production for all OHA administrative law judges who were on duty during fiscal year 1981 was 383 final dispositions, an average of 32 dispositions per month.

6. Specifically, for fiscal year 1981, the employee's monthly production was as follows:

<u>MONTH</u>	<u>TOTAL DISPOSITIONS</u>
October	10
November	15
December	10
January	14
February	13
March	13
April	7
May	9
June	15
July	14
August	14
September	13
	<u>147</u>

7. Mr. Shore's production thus far in fiscal year 1982, as indicated below, shows no improvement:

<u>MONTH</u>	<u>TOTAL DISPOSITIONS</u>
October	12
November	9
December	12
January	8
February	10

Page 3 - Mr. Robert E. Taylor

8. In addition to his failure to dispose of a minimally acceptable number of cases, Mr. Shore has also failed to carry a minimally acceptable workload.

9. Mr. Shore's annual average monthly pending for fiscal year 1980 was 45. The annual average monthly pending for all OHA administrative law judges during fiscal year 1980 was 135.

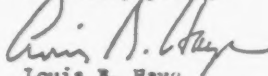
10. Mr. Shore's annual average monthly pending for fiscal year 1981 was 51. The annual average monthly pending for all OHA administrative law judges during fiscal year 1981 was 178.

11. Mr. Shore's inability or unwillingness to maintain a workload comparable to that of his peers places an unfair, unwarranted burden on the other administrative law judges and delays the processing of all social security claims within the hearing office.

12. Mr. Shore's performance as set forth above constitutes an unacceptably low level of efficiency and productivity for an administrative law judge in OHA.

This letter of charges initiating removal proceedings is submitted for your action pursuant to 5 C.F.R. 1201.134.

Sincerely yours,



Louis B. Hays
Associate Commissioner
Office of Hearings and Appeals

DEPARTMENT OF HEALTH & HUMAN SERVICES

Social Security Administration

Referred to: SCAA

Office of Hearings and Appeals
PO Box 2318
Washington DC 20013

April 20, 1982

CERTIFIED MAIL - RETURN RECEIPT

Mr. Robert E. Taylor
Office of the Secretary
Merit Systems Protection Board
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

Dear Mr. Taylor:

The Office of Hearings and Appeals of the Social Security Administration (hereinafter referred to as OHA) proposes to remove Robert W. Goodman (hereinafter also referred to as the employee), an administrative law judge in OHA appointed pursuant to 5 U.S.C. 3105. In accordance with 5 U.S.C. 7521 and the regulations promulgated pursuant thereto, this matter is referred to the Merit Systems Protection Board to determine if there is good cause for the removal of the employee for inefficiency. The charge against the employee is as follows:

CHARGE

Mr. Goodman's productivity level is, and has been for some time, unacceptably low. This inefficiency on the part of the employee in the conduct of his official duties, resulting from his failure to increase his output to a minimally acceptable level of productivity, has contributed to undue delays experienced by claimants awaiting a hearing decision under section 205(b) of the Social Security Act and is detrimental to the efficiency of the service.

SPECIFICATIONS

1. Mr. Goodman, an employee assigned to OHA's Charlotte, North Carolina Hearing Office, has been repeatedly counselled formally and informally on improving his production.
2. By memorandum dated May 11, 1981, Chief Administrative Law Judge Philip T. Brown officially notified Mr. Goodman that during calendar year 1980, his productivity was significantly less than that of his peers. He was asked to effect a substantial increase in his output and to advise the Regional Chief Administrative Law Judge of what assistance he needed to significantly improve upon his 1980 performance.
3. A review of Mr. Goodman's past production shows that for fiscal year 1980, he issued 187 final dispositions, averaging 15.6 dispositions per month. The average production for all administrative law judges who were on duty during fiscal year 1980 was 360 final dispositions, an average of approximately 30 dispositions per month.

Page 2 - Mr. Robert E. Taylor

4. Specifically, the employee's monthly production for fiscal year 1980 was as follows:

<u>MONTH</u>	<u>TOTAL DISPOSITIONS</u>
October	16
November	17
December	7
January	13
February	19
March	13
April	19
May	11
June	15
July	21
August	17
September	19
	<u>187</u>

5. For fiscal year 1981, Mr. Goodman issued 190 final dispositions, averaging 15.8 dispositions per month. The average production for all OMA administrative law judges who were on duty during fiscal year 1981 was 383 dispositions, an average of approximately 32 dispositions per month.

6. Specifically for fiscal year 1981, employee's monthly production was as follows:

<u>MONTH</u>	<u>TOTAL DISPOSITIONS</u>
October	14
November	16
December	10
January	20
February	21
March	21
April	15
May	12
June	14
July	19
August	13
September	15
	<u>190</u>

7. Mr. Goodman's production thus far in fiscal year 1982, as indicated below, shows little improvement:

<u>MONTH</u>	<u>TOTAL DISPOSITIONS</u>
October	8
November	15
December	14
January	23
February	21

Page 3 - Mr. Robert E. Taylor

8. In addition to his failure to dispose of a minimally acceptable number of cases, the employee has also failed to carry a minimally acceptable workload.

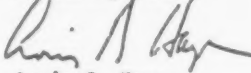
9. Mr. Goodman's annual average monthly pending for fiscal year 1981 was 64. The annual average monthly pending for all OHA administrative law judges during fiscal year 1981 was 178.

10. Mr. Goodman's inability or unwillingness to maintain a workload comparable to that of his peers places an unfair, unwarranted burden on the other administrative law judges and delays the processing of all social security claims within the hearing office.

11. The employee's performance as set forth above constitutes an unacceptably low level of efficiency and productivity for an administrative law judge in OHA.

This letter of charges initiating removal proceedings is submitted for your action pursuant to 5 C.F.R. 1201.134.

Sincerely yours,



Louis B. Hays
Associate Commissioner
Office of Hearings and Appeals

APPENDIX II

Cessation of Benefits

Judges Report Pressure to Deny Disability Benefits

By ROBERT FRANK

Special to The New York Times

WASHINGTON, June 8 — Independent hearing officers employed by the Social Security Administration said today that the agency had put improper pressure on them to deny benefits to people with mental and physical handicaps.

The pressure, they said, was part of the Reagan Administration's effort to purge the rolls of people who are ineligible for benefits. Federal officials have said that at least one in five people on the rolls is ineligible and that the Government is losing \$2 billion a year in payments to such people.

Charles H. Bone, president of the Association of Administrative Law Judges, which represents more than 600 Social Security hearing commissioners, said the agency had directed them to disregard certain Federal court decisions favorable to beneficiaries.

"What is occurring must be stopped, and stopped immediately, before more irreparable damage is done to the fairness of the hearing process," he said in testimony before a Senate Governmental Affairs subcommittee.

Says Judges Have 'Quotas'

Mr. Bone said Social Security officials had a "statistical tracking system" to record the number of cases decided and the number of claims allowed by each of the 700 administrative law judges. Using this system, he said, the

Social Security agency has set productivity quotas for its judges and has told some judges that they have allowed too high a percentage of claims.

Louis R. Rye, an American Commissioner of Social Security, denied that the agency had put improper pressure on the judges. "No attempt is ever made to influence the outcome of a particular case," he said. "There is not one and never has been a goal or quota established for acceptable allowance or denial rates."

But Senator William S. Cohen, Republican of Maine, said he had obtained an internal memorandum from the Social Security agency setting a goal for each judge to dispose of 45 cases a month by September. The document said Social Security officials would take "appropriate adverse actions against underachieving administrative law judges." In 1980, each judge disposed of 35 cases a month on the average.

60% of Claims Granted

Confronted with the document, Mr. Rye said it represented his "personal objectives" for the agency. He said each judge must maintain a "minimally acceptable level of decisional output" because the agency had been deluged with appeals since it stopped up the pace of eligibility reviews in March 1981, under a statutory requirement.

In the last fiscal year, he said, the agency received 200,000 requests for hearings, a record number. Administrative law judges overrule decisions to

terminate benefits in about 60 percent of the cases that they hear.

The judges play an important role in the disability insurance program. They review the facts in each case where the claimant pursues an appeal. The judges are appointed for life and may not be removed except for good cause.

Nevertheless, the Social Security agency can put pressure on its judges by filing complaints against them, trying to remove them from office, reducing their staff and limiting their travel authority, Mr. Bone said.

Mr. Rye said the agency did not consider itself bound to accept Federal court rulings except as they applied to the person who filed a particular lawsuit against the Government.

In seven cases, he said, Social Security officials announced they would "not adopt a particular court decision as agency policy." This approach is necessary, he said, to guarantee uniform national rules for the disability program.

Mr. Bone, speaking for the judges' group, said this practice violated "well-established principles of American jurisprudence," under which agencies are supposed to follow court interpretations of the law. Ellen H. Ashel, a senior attorney at the Legal Aid Foundation of Los Angeles, said the Social Security agency's refusal to follow court decisions was a form of "intimidation" that could have a "devastating impact" on people getting disability benefits.

Senator BINGAMAN. We have some people who have indicated they need to testify this morning. I'd like to give the opportunity to these people. We have on the next panel that we were going to have at 1:30: Rupert Zamora, Elbie Jernigan, Roy Stapp, and Esther Baca.

Do some of that group need to give their statement now and want to do it very quickly?

Mr. JERNIGAN. I would like to give mine.

Senator BINGAMAN. You're Mr. Jernigan?

Mr. JERNIGAN. Right.

Senator BINGAMAN. Why don't you come forward, and especially if you could do that quickly, that would be very helpful.

Is there anybody else in that panel who needs to testify? Yes, ma'am?

Mrs. BACA. Mrs. Baca.

Senator BINGAMAN. OK. If you could do the same thing and make the testimony brief, because I would like to allow people a short break before we start the lunch period.

Let me ask on the next panel, panel 7: Thurman Gartman of Ruidoso, Roberta Beckerman of Roswell, and Theron "Cotton" Rayburn of Lovington, can you folks stay and testify at 1:30? Is that going to be a problem?

That would be ideal—OK. That would be great if you folks could. We'd appreciate it very much.

All right. Esther, did you want to go ahead, and then Mr. Jernigan?

Mrs. BACA. Yes.

TESTIMONY OF ESTHER BACA, SAN JUAN, NM; ELBIE JERNIGAN, ALBUQUERQUE, NM; AND ROY STAPP, ALBUQUERQUE, NM

Mrs. BACA. I'd like to thank you for being here today and testifying for my disability. I have been disabled for 3 years, going on 4. I have a back problem. I have been suffering from a case for 8 years with the previous 3½ years I have not been able to work either at home or elsewhere.

I have contacted Social Security on behalf of my disability, and they have told me to apply, which I did, and they denied my case, and I re-applied. They denied it again. And I reapplied, and then I applied again, and then Judge Wren and I talked by phone and he said that he was going to approve my disability, which he did.

Then after that, he said the papers—he sent the papers to Arlington, VA. So I got a letter stating that I was not disabled. So what Social Security wanted was for me to appear in court personally with Judge Wren. It took me, I think, maybe 8 months. I'm not exactly sure how long, but approximately there.

I went to court with him in person, and he told me that definitely I was disabled and that I needed to get my benefits out of Social Security, and that's the second time that he was going to—had disabled me.

My case was sent back to the Appeals Council in Arlington, VA, and again they told me that I was not disabled. After that, I went back to Social Security here in Santa Fe and I asked them, "What do I do now? I cannot work. I can't do nothing. I am just completely disabled as far as I am concerned. I cannot do housework. I can't do nothing."

They told me to go ahead and go to your office. At that point, I contacted Miss Bustamante. She helped me, and she has been a lot of help to me. She contacted some legal aid from Albuquerque and have been dealing on my case.

As of yet, I have not known anything was going to happen to my case as of yet. Like I say, so there's where I stand right now. And like the legal aids a while ago were saying, that I don't know why they have to give like Judge Wren such a bad time, you know, in sending the complete claim to the Appeal of Councils, and then rejecting it.

I have been in four different hospitals in regard to my back. I have had two myelograms. I have had a CAT scan. And I have been told that I need surgery on my back.

Senator BINGAMAN. What is the status of your claim now? Are you waiting for some additional determination, or have you run out of options?

Mrs. BACA. No, I am waiting for legal aid from Albuquerque that they will hear my case. I don't know if I'm going to go to court with the Social Security or what is going to happen, but I've been contacted by Miss Bustamante with regard to this, and she has informed me of what's happening in the near future.

And, you know, that's where I stand right now, and I just cannot see why the judge is giving such a bad time, because I cannot do anything, and I am furious, and I am aggravated, and I have already had it.

I've already also have come to the conclusion where I'm physically—not only physical, but mentally, also.

Senator BINGAMAN. We appreciate your testimony here today, and I hope that working with our office and through legal aid, we can do something to help you.

Mrs. BACA. Thank you.

Senator BINGAMAN. Thank you. Thank you very much.

Mr. Jernigan.

Mr. JERNIGAN. I appreciate being here, and to let you know something about my case. I also would like to express one thing: hospice care, legal aid services. I am a veteran and I have had part of this problem since 1945. It never did give me a headache until I had a back fusion.

I was on Social Security for 13 years. I got off of Social Security and I went back to work for 5 years. The last job I was on I got fired because my family was helping me do the job.

I have not been able to work since June 16, 1982. I have filed for Social Security, appealing it. I have never got even to the hearing stage. I want to read you a letter, and another thing I would like to say: Our State-paid hospitals in this administration.

I want to read you one little thing, and I want to say that the State hospitals and doctors will tell you one thing and put on record another on account of the Administration. That is illegal, and any doctor you go to that Social Security sends you to gets paid not to prognose what you really have.

I can prove my deal back in the service. I had a service connection disability, a small amount. I was totally and permanently disabled by their own records, and they kept me off of that.

Now, I would like to read two things. Dr. Hall finally got their records:

Mr. Elbie Jernigan was diagnosed at the University of New Mexico Hospital-BCMC as having scleroderma. This is an extremely disabling condition which renders the patient totally dependent on other cares. He has been unable to work for quite awhile, due to this condition, and he should be considered totally disabled.

I would like to read to you a deal from Social Security:

You have been diagnosed as possibly having somatic sclerosis. You have stiffness of the hands and problems swallowing. You have some blurry vision and none of this meets any requirements for disability. Medical evidence records reveal no other condition that would prohibit you from working.

I have went from 200 pounds to 145. I have got nothing on my bottom end. I can't control my hands. If I could, I would be working. I would not give one damn for the Social Security. I have got approximately 6 months, and they tell me it will take 6 months to get me before I am prognosed to die.

What good is Social Security if you can't get it? If you've got to fight it for 2 or 3 years to get it? What good is it? I have expressed that I have got Senator Domenici, Congressman Lujan, Mr. Bill Richardson. There's only two things that has ever been done for me: I finally got food stamps. I finally expect next week to get AFDC, \$55.

I lost my family because I could not support them. I fought for America. Why in the world can't America do something for the people? It's the richest country in the world.

I'm sorry. That's all.

Senator BINGAMAN. No, I appreciate your testimony very much. I appreciate your testimony. Let me just ask on your case when the application was filed for Social Security.

Mr. JERNIGAN. July 1982.

Senator BINGAMAN. And to date you have not yet seen anybody from the Social Security Administration to interview you with regard to that application?

Mr. JERNIGAN. All I have had is appeals, appeals, denials, and appeals. I have got every one of them. Congressman Lujan told me to appeal it in front of an administrative judge. That has been over 3 months ago.

They tell me it will be December before I will even have a hearing. Legal aid that's representing me in Albuquerque, they did all they could at that time, and now, like I say, I'm under hospice care.

I really thank Congressmen for setting up something like this. And I will say that every doctor that I have been to that Social Security sent me to—I was supposed to have went to a doctor. What did they do? They took one x ray and sent me home. That was all. I've got the papers right here, right here.

That was in Hobbs, NM. I've had them deny me for everything. And these doctors are being paid their fees. When a person cannot afford an attorney and that attorney comes around, and if they do get something for it, they take it, well, what good is that?

Senator BINGAMAN. Well, I appreciate your testimony.

Let me say—and I should have said this earlier—that on all the cases that are discussed here, we, of course, are going to request a full report from the Social Security Administration and determine what

we can do to improve the situation. And I hope that we can do something.

Mr. JERNIGAN. One other thing: BCMC told my daughter-in-law what I had. I was not able to work, but they turned right around and said they would not help me whatsoever. They would do nothing for me to help me.

Senator BINGAMAN. This was BCMC?

Mr. JERNIGAN. This is BCMC in Albuquerque. You know what they got on their records? "Unknown, unknown, unknown." If Dr. Hall hadn't have been the kind of doctor he was, and have read their records, I would have never gotten this far [indicating]. Hospice helped me very much and should be appreciated for what they stand for.

Senator BINGAMAN. All right. We appreciate your staying—

Mr. JERNIGAN. And hospice helps me to do it.

Senator BINGAMAN. We appreciate your staying and testifying this morning.

Mr. Stapp.

Mr. STAPP. Senator, I'm Roy Stapp, and I was a truck driver. I worked with the Sandia Mountain for 14 years, and out there at Sandia Base I was loading oil and I slipped off a dock and busted my back. It just tore me all to pieces.

Well, I've been through three surgeries now, and the last one was September 6, and I'd go back to work right now if someone would hire me, but who would hire you with a sixth-grade education and all I know how to do is drive a truck or heavy machinery or something like that?

And that's about all I really got to say.

Senator BINGAMAN. You've applied for Social Security?

Mr. STAPP. I've applied for it, but I haven't heard. They said there isn't nothing wrong, but the last time I went to the VA hospital, they took all the screws out of me. They messed me up, you know. They screwed me up the first time. Well, they took the screws out. They hadn't fused me on one side and the middle of my back, all my nerves and muscies had—went together, so I went down to Social Security and they gave me a physical.

Well, they didn't pick that up, so they dropped me, so I went to a doctor, and they give me all these tests and they found out what was wrong with me.

Senator BINGAMAN. But at the present time you've been turned down by Social Security? Have you appealed?

Mr. STAPP. Well, I'm just waiting. See, I went to a hearing here about 2 weeks ago, and I didn't know about anything.

Senator BINGAMAN. Was that before an administrative law judge?

Mr. STAPP. That's with a judge, yes, sir.

Senator BINGAMAN. So you're waiting for some kind of decision from the administrative law judge?

Mr. STAPP. I could go to work right now, but who in the heck would hire you with a sixth-grade education?

Senator BINGAMAN. All right. We greatly appreciate your staying and testifying, too, and we'll look into it and see if there's anything we can do on that case.

Mr. STAPP. Thanks a lot, sir.

Senator BINGAMAN. I appreciate all three of you folks staying and testifying.

We're going to break for lunch at this time, and we are going to go ahead and show this film at 12:30 for anybody who wants to see that, or if you can find some way to eat lunch and see it at the same time. We will start the hearing again at 1:30 and start up with more testimony at that time.

Thank you all for being here.

AFTERNOON SESSION

Senator BINGAMAN. If everyone's ready, why don't we go ahead and start the hearing again.

We are now to panel 7. We have three people on the panel: Thurman Gartman of Ruidoso, Mrs. Roberta Beckerman of Roswell, and Theron "Cotton" Raburn of Lovington.

If you folks would please come up, we'd appreciate it. OK. I don't think there's any particular concern on the order. Would you like to go first? You're Mrs. Beckerman?

Mrs. BECKERMAN. That's correct.

Senator BINGAMAN. Can you go ahead, and maybe pull that microphone over in case someone in the back of the room can't hear you? And go ahead.

TESTIMONY OF ROBERTA BECKERMAN, ROSWELL, NM; THERON "COTTON" RABURN, LOVINGTON, NM; AND THURMAN GARTMAN, RUIDOSO, NM

Mrs. BECKERMAN. Without giving you too much of my history, which is voluminous, I had cancer twice and went back to work. I had heart failure and went back to work. And it finally got to a point where I had rheumatoid arthritis, osteoarthritis, gouty arthritis, ulcers, malignant hypertension, and a few other assorted goodies, and the doctor finally said no more work.

That was 1977, and I have been on disability ever since. Starting with the reviews, I was pulled in January 1981, and I put just a brief statement together, and I have all these papers, if you would like copies of them for the record.

No one disagrees with the why of disability reviews, but the way they're conducted can and is causing extreme hardships for those who are legitimately disabled. I'm not talking about just monetary hardships, but mental and emotional hardships on the whole family.

Some people were expected to fall through the cracks, but how many are really sliding down the tube? In my case, the review has been going on since January 1981. All the physicians I have been sent to agree with mine, and the law judge has found in my favor twice.

But as of today, the matter still has not been resolved. That's 68 days, by the way, since the last decision. As a result of this, I neither have nor can get any insurance. Most insurance companies refuse to even accept an application. Those that will accept an application don't cover much and require a 2-year waiting period or 1 year of good health on a preexisting condition, which amounts to no insurance at all.

The long waiting periods involved are extremely stressful, and anyone who starts out with asthma or ulcers quickly finds themselves on tranquilizers. As the monthly payments have stopped when the medicare stopped, it no longer becomes possible to pay for all the medication and to maintain visits to the doctor on a regular basis.

One reduces medication to those needed to support life, and forego those that serve to make life almost bearable. As for the doctor, if it's not an emergency, you don't go. And what would happen if hospitalization were to be required? We could lose our home and all we possess for one small hospital stay.

What option do I have? Must I divorce my husband to protect him from something that's not his fault, and he can do nothing about? What do I do? What about the taxpayer? They're who end up paying for all the tests and doctors and lawyers and judges and appeal boards and social workers and all the other people and things that it takes to process this for 3 years.

I wonder if this is really the way to economize, savings in the system and provides justice for anyone.

I would like to answer any questions.

Senator BINGAMAN. Well, thank you very much. I appreciate your testimony. Why don't we go ahead and hear from the other two gentlemen, and then maybe I'll have some questions at that point.

Go right ahead.

Mr. RABURN. I am Theron Raburn. I'd like to thank you for this opportunity to be here. I'm not very good at making speeches, anyway, but I paid for my troubles I've had the last 20 years.

I had an automobile accident about 30 years ago and it left me with head injuries, and about 20 years ago, I started having seizures, and about—it's been about 20 years now, I guess.

They get worse, and I've been unable to work, and I don't know whether the seizures caused the arthritis or not, but I've come down with the arthritis, unable to take care of the business, and I don't know if there's much more to say.

I've turned this in to Social Security, and that's been 6 months ago, and I've been turned down on it, and I've had no reason in the world to figure out why I should be, and I'd like for somebody to look into it and find out why a person has to wait so long about it.

I guess that's about all I have to say. If you have any questions to ask me—

Senator BINGAMAN. I'd like to go ahead and hear from Mr. Gartman, and then maybe we'll have a question or two for each of you after that.

I appreciate your testimony very much. I appreciate your coming all this distance to testify, too. I realize that Lovington's a long ways away.

Mr. RABURN. Thank you, Senator.

Mr. GARTMAN. Well, I appreciate, Senator Bingaman, the opportunity of being able to testify.

Not too long after this lady here, in 1977, I went on disability. I was injured in an industrial accident in 1964 and had spinal fusion, and then I was able to perform my job until 1977, when the pain got so severe that I had to go on disability because of my back, along with poor vision.

And the same thing happened then that happened now. I appealed and it was turned down, and I appealed again and it was turned down, and it went before the administrative law judge, and he ruled wholeheartedly in my favor.

Well, since that time, and that's been 6 years ago, I have, according to a neurosurgeon, degenerative disease of the entire lumbar and cervical spine, along with being blind in the right eye and going blind in the left eye.

But I came up for a review in March. And, again, I was denied, and I appealed again and I was denied. And now my appeal is before the administrative law judge, and when I went on disability the first time, I thought that if your condition was the same or worse that you would continue on total disability.

Well, the spine at that time was only 60 percent diseased. Now it's 100 percent diseased, and my vision at that time, I could see only 20/40 out of my left eye. Now it's 20/60, and when I've got to use it, it blurs out and I'm totally blind.

And the question I'd like to ask the Social Security Administration: What is a blind man supposed to do? What kind of job is he supposed to do? My back wouldn't take it. This is why I can't understand why I was turned down with three letters from a doctor stating that my condition is worse and will get worse in the future.

Senator BINGAMAN. Well, thank you, Mr. Gartman. I appreciate that testimony. Let me just ask you what your situation now is. You are in the process of going through an appeal to an administrative law judge; is that right?

Mr. GARTMAN. Well, from what I hear, my papers are there in Dallas, but it's over the administrative law judge at this time. It's been to the other.

Senator BINGAMAN. OK. You don't have a decision out of the administrative law judge at this point?

Mr. GARTMAN. Yes, sir.

Senator BINGAMAN. OK. Let me ask Mrs. Beckerman: Your case has already gone past the administrative law judge and is at the Appeals Council in Washington; is that right?

Mrs. BECKERMAN. For the second time.

Senator BINGAMAN. The second time?

Mrs. BECKERMAN. I have two decisions in my favor.

Senator BINGAMAN. Right. The first time the administrative law judge found for you, the Appeals Council reversed and sent it back?

The administrative law judge found for you again, and now they're considering it again?

Mrs. BECKERMAN. That's correct. The second decision says:

Notice of recommended decision of administrative law judge on Appeals Council remanded, and the decision of the administrative law judge that the claimant continues to be entitled to a period of disability and the disability insurance benefits.

And he lists the sections that it applies to.

Senator BINGAMAN. But you don't have any indication as to when a decision will come out of the Appeals Council?

Mrs. BECKERMAN. No; there's nothing on this at all that says that the appeals board has a time limit; just that I have a time limit if I disagree.

Senator BINGAMAN. OK. And Mr. Raburn, let me just ask you: You have never received any disability benefits; is that correct?

Mr. RABURN. That's correct.

Senator BINGAMAN. But your application for disability benefits has been turned down, and you're now appealing that decision; am I correct?

Mr. RABURN. That's correct.

Senator BINGAMAN. OK. All right.

Mr. RABURN. I've been unable to work, I guess, for the last 3 years, and I finally just give up and thought—turned it over to Social Security and see if I could get something out of them, and they hadn't helped me either.

Senator BINGAMAN. When did you file with Social Security?

Mr. RABURN. It was March of this year.

Senator BINGAMAN. And then you received an adverse decision from them about when?

Mr. RABURN. It was in June that I would have a hearing on it, but then it's been 3 to 6 months.

Senator BINGAMAN. Well, I appreciate all your testimony, and, as I said this morning, we're going to, of course, on all three of these cases—and all the other cases that we hear about today—we're going to request a complete report from the Social Security Administration and see what we can do to help in those cases.

These are excellent examples of the problem, and thank you very much.

Mrs. BECKERMAN. Thank you.

[Mr. Gartman's prepared statement follows:]

PREPARED STATEMENT OF THURMAN D. GARTMAN

I, Thurman D. Gartman, was injured in an industrial accident in 1964, followed by spinal surgery.

In the intervening years my spine began to deteriorate from degenerative arthritis until in 1977 I was determined to be totally and permanently disabled and unable to continue in my job as compressor operator for Getty Oil Company or any other job for which my education, previous experience, or physical condition would allow me to perform.

I applied for social security benefits and finally was awarded disability benefits by an administrative law judge in 1977.

My case has been reviewed periodically since then.

When this new review procedure was begun this year I was sent to a doctor in El Paso, Texas, for another exam. He spent less than an hour with me and determined that I was able to return to the job market.

I was told that I would not be allowed to know what his findings in my case were. I was not advised of them until I appealed to Senator Bingaman's office for help in the matter.

Upon returning from this visit I went to a medical doctor, an orthopedic surgeon, and an ophthalmologist to have my case reviewed and evaluated (at my own expense) and all three diagnosed me as continued to be disabled.

I have been diagnosed as having degenerative arthritis of the entire spine which is aggravated by standing, sitting, or any other physical activity. I have no vision in my right eye and optical nerve degeneration in my left eye. The left eye blurs to the point of vision under stressful conditions.

As of this date my case is before an administrative law judge and I have received no report.

Senator BINGAMAN. OK. Next is Jim Burke, who's a Santa Fe attorney who has had experience with these cases. And maybe if Jim would be willing to testify now, and also could Dr. Novosad come forward to testify?

Dr. NOVOSAD. Yes, sir.

Senator BINGAMAN. Could you come up at the same time, doctor, and we'll hear from both of you. I think David Duhigg was planning to be here and is not yet here, but if he arrives, we'll sure hear from him, too.

We appreciate both of you coming. Jim, why don't you go ahead and tell us whatever your view is on this situation.

TESTIMONY OF JIM BURKE, ATTORNEY, SANTA FE, NM; AND C.L. NOVOSAD, M.D., GERIATRICS PHYSICIAN, POJOAQUE, NM

Mr. BURKE. Thank you, Senator.

Senator, I'm Jim Burke, and I'm an attorney here in Santa Fe, and as you indicated, I have been representing Social Security claimants for 9 years now.

The reason I'm here is on behalf of several clients of mine, and on my own behalf as a concerned citizen, concerned with the administration of this program, primarily. I'm here not to resurrect William Gladstone's dictum that "Justice delayed is justice denied."

In my representation of Social Security claimants, I've seen, as many people here have—who spoke earlier in the day—seen some very substantial injustices being done and causing severe pain and economic and emotional suffering to other people.

And I'd like to bring your attention, however, simply to the time-frame that some people have experienced in their quests for determinations by the Administration. Of course, the determinations aren't favorable to the claimant, but, in any case, the law very clearly provides those people with administrative process which should be conducted in a reasonably prompt manner, particularly when you consider the economic and physical problems these people suffer.

One of the easier and less severe cases is a former client of mine who successfully won her case before an administrative law judge in December 1982. She had been on Social Security from 1977 as a result of a disease called Crohn's Syndrome, which is a very severe intestinal disability.

During her disability review, she was determined no longer to be disabled, and as I stated, she successfully prevailed in her claim to the administrative law judge.

Back in 1982, however, until the beginning of this year, she experienced a loss of her benefits during the appeal process. I believe her benefits were ceased in March 1982.

She prevailed in her hearing decision in December 1982. And, according to the law of the Appeals Council, 60 days to review the administrative law judge's decision before it became final. The Appeals Council in Washington—or in Alexandria, I believe it is—waited 60 days and did nothing. And when we called the local Social Security office, they advised that something would happen in another 60 days.

We waited until May, 60 more days, and nothing happened again. Finally we were told that the benefits would be paid by July. They were not paid by July, and, I believe, a letter from your office successfully resulted in the benefits being paid to the client in August 1983. That is 1½ years after the benefits stopped; 8 months after she prevailed in her administrative hearing; and some 5 months after the So-

cial Security Administration no longer had legal authority to withhold that payment.

That's a happy case, however. The Administration has still not found, by the way, my attorney's fee on that case, but that's not a problem that is important enough to deal with at this point in time.

From my experience in connection with these other cases, I've become aware of the fact that the Appeals Council in Washington very obviously has a severe volume problem, and it causes massive delays in processing of the claims.

I have two cases in front of the U.S. district court from which the appeals are taken when the appellant loses at the administrative level, and in two of those cases the Administration agreed to a remand; that is, shifting it back to the administrative process because they lost the file.

Now, under Social Security law, an unsuccessful claimant is allowed to file a lawsuit to review the Administrator's decision in a U.S. district court. And the U.S. Government, the Social Security Administration, has 60 days after the lawsuit is filed within which to file a transcript of proceedings at the previous administrative levels.

In two of the cases I'm representing claimants on now, the Administration confessed after 4 months of delay that 60 days after filing of the lawsuit, they request an extension of another 60 days, routinely given, and then at the end of the 4 months, they advise that they can't find a transcript of the hearing where the claimant lost the hearing, and, of course, as a matter of fundamental fairness and lower questions, in fact, that the claimant doesn't have a transcript there to complain about, the Administration has a duty to either find them or give them their hearing.

In one case, the case of Norma Hale, Count No. 304384416, the Administration agreed to remand in March 1983. This was about approximately 4 months. We filed a lawsuit in November, if I recall.

Since March 1983, when the case was sent back to the Appeals Council for reconstruction of the record of new hearing, we haven't heard anything about the case. It's a virtual black hole, a vacuum into which the file has disappeared, and I've checked with the U.S. attorney and I've talked to Miss Bustamante at your office, and we have a letter that was generated, for which we thank you. Nothing has been heard. It's been 6 months from the time where technically she won her Federal case and should be getting a new hearing, but, of course, nothing has been heard.

The problem with the untimeliness of all this is that even when you win even on a technicality like this at the Federal court level, the case is remanded to the Appeals Council, and the Appeals Council, as I indicated before, has a severe volume problem. I don't know what they do with that. I don't know where Mrs. Hale's case is or Mr. Ivan Ortiz, my other client whose case has just been up 2 years ago for the same reason: Failure to file the transcript.

I don't know what they do at the Appeals Council, but, of course, they certainly can't provide another hearing from Alexandria. They have to retransfer it back to the bureau of hearings and appeals in Albuquerque for assignment.

But, as I say, we don't have any indication that that's occurred here. I should point out that my experience has indicated that the U.S. attorneys in Albuquerque and in the rest of the country are very conscientious attorneys, and I certainly have no quarrel with them. They have instructions from the Social Security Administration to routinely request extensions of time of 2 months in Social Security appeals.

Now, this was probably years after the claimant had filed a claim for benefits, lost the various administrative appeals, had that 60-day hiatus from the administrative law judge to the Appeals Council, found an attorney, filed a lawsuit, and then the delay continues.

For those cases where they find the transcript, and file it in the U.S. district court, the delay continues. Of course, it's just the typical delay of litigation you have when the U.S. attorney files the transcript and files a perfunctory brief in seeking to affirm the decision of the Administration.

You have a scheduled briefing where the United States gets approximately 30 days to 45 days from the filing to file its brief. The plaintiff's counsel gets 30 days to file its response, its legal arguments, as to why the case should be sent back down to this long, time-consuming process to start again, to get another chance.

And then, of course, the United States has another 15 days or so to respond to that. From that point in time, the decision of the court is a function of the court's calendar and backlog, and I understand that essentially that has increased the numbers of the reviews; that the U.S. magistrate in Albuquerque and the district judges have quite a backlog in those type cases, as well, and simply have no experience in how long it takes from the time of filing a lawsuit on behalf of the Social Security claimant to decision is, because I haven't had a response yet in three different cases that are pending in the district court now, and I can tell you it takes more than 4 months, but I don't know how much longer than 4 months. But, again, that's just a small chapter in the odyssey of an unsuccessful claimant's problems in waiting month after month, week after week, for a response on their claim.

I should state that one of my clients is here today, Mr. Martinez. Each of my clients whom I'm representing in court has a meritorious claim. They've been through much of the same experiences as have been testified to earlier today, and the answer to this particular time-consuming problem, I should think, is simply an increase in the number of people who process these Social Security claims.

You can't cut a Government expenditure by cutting Federal employees on one hand and expect to promptly, or reasonably promptly, see to the cases in front of you.

Another suggestion I might make is that since the communication with the Appeals Council in Washington is virtually impossible, you can't pick up a telephone and call them, but I would suggest a Federal line of communication or perhaps a decentralization to some extent of the functions of that Appeals Council. The local Social Security office is very cooperative and tries very hard to channel or transmit questions on behalf of claimants to Washington or to Baltimore where the main office of Social Security is.

But they have other things to do, and, of course, they're in the same position as we are, calling on the telephone or teletype or some medium to an office or a bureaucracy 2,000 miles away. I'm sure many of

those employees which have telephones here expressed a high degree of frustration in finding out the status of the claims of local citizens.

I think that's all I have to say at this point in time, I have one other minor concern, and that's the concern of individuals who now, since January 1983, are allowed to maintain their level of payments while they seek an administrative law judge hearing.

When a claimant goes into the office and requests a hearing, as I say, they have a legal, as well as constitutional, right, now, to have their level of payments maintained. The Administration has fashioned a statement of claimant or other person and requires for some reason the individual claimant to sign it and does not permit the attorney to simply write a letter saying, "Under the law, I request on behalf of my client a continuation of payment."

They require the claimant to personally sign a statement saying, "I have been advised of my right to have my disability payments and medicare coverage continued," and to paraphrase it, it further states that, "I understand that depending on the outcome of my appeal, I might have to pay the money back if they lose and unlawful payment is declared."

It quite properly says that they have the right to request a waiver of overpayment, in case they do lose, and the Administration has procedures for waiving that overpayment if the overpayment is generated not due to the fault of the—but the fair—the form goes on to have several boxes to check.

The first box says: "I do not want any"—underscored—"any payments continued." The next one is: "I want only my payments continued." The third is: "I want payments continued for myself and everyone else on my Social Security." The next is: "I want benefits continued to everyone qualified on my record, except myself." Why someone would want to do that, I don't know. And the third—the last one on this form and I've seen a couple of more boxes on other forms—is: "If medicare coverage is applicable for myself or anyone else, I want this coverage continued, but do not want any disability payments continued."

I have a hard time reading this and figuring it out. I feel like a kid trying to take a multiple choice test in a grade three—three grades ahead of me. You have to read it five times to find out what it is, and I'm an attorney. I'm used to looking at fine print and reading insurance policies and things like that.

I don't know how an average claimant can read this and make an intelligent decision on it. I don't know how many claimants, perhaps, might be intimidated from or confused, check the wrong form. They might just get confused and not exercise their right to the continuation of payments.

And, as a lawyer, I would suggest that once Congress has acted and allowed recipients to maintain their continuation of benefits pending an appeal, that they don't—the Administration doesn't really have a good reason to require either physical actual signing by the recipient when they're represented by counsel, at least, and certainly doesn't have the authority to request such a confusing and perhaps intimidating exercise of mind here.

I want to thank you for listening to me.

Senator BINGAMAN. Well, I appreciate it very much. I think it's very interesting.

Let's hear from Dr. Novosad, and then maybe I can think of some questions for either one of you.

Dr. NOVOSAD. Thank you, Senator, and your staff for the privilege of being here. I have provided a very brief agenda on four things which I think you have a copy of.

The first one: I think that the problem originates at three levels. First, with the President and with Congress. Second, at the disability determination unit levels. And, third, at the administrative law judge levels.

Now, the original thing is financing. The whole country is aware of this. I think basically one simple ideal to throw out to Congress is that leave Social Security over 65 like it was meant to from what you take out with FICA taxes, and on the rest of this, on payments, put it out of a general fund. Then the employees that hold FICA tax out of there will not be disgruntled, and you can take a better look at this whole situation across the country. And you won't have the remarks that Warren Magnuson, who stated to me in a taxicab some years ago: "I won't be around when the high taxes come, so I won't have to worry about it," period.

The second thing: At the disability determination unit. My own profession and the doctors in the administrative health in this State—and I'm speaking only primarily for New Mexico—do not really realize the concept of what they write. If they sent a person to an examining physician, and that physician, you know—well, maybe this patient can do something. The reports that they write are very inadequate, and the disability determination unit itself in this State has kicked everybody off of the rolls that can walk.

I know of only one instance on reconsidering on the 10-day level, where an individual has been put back on the rolls, and I deal extensively in this process because of the fact that I do geriatrics.

I'm going to give you a very short example. This happened yesterday: I have a man who's a metal worker, 40 or so years old, who some time ago had a massive myocardial infarction. He ultimately, last January, underwent a five-stage cardiac bypass here in New Mexico in Albuquerque. This was at Presbyterian Hospital, and involved Los Alamos and myself, all competent physicians.

He applied for Social Security. He received the usual request. All of the information was submitted. DDU, as usual, rejected all of this information and scheduled him at a cost to the Government probably of an estimated \$2,000 or \$3,000, with two physicians of their choosing in Albuquerque.

I told them the patient could not travel to Albuquerque by the assigned bus, and they would have to get an ambulance. So they scheduled him in Santa Fe.

I told the disability determination unit physician in Santa Fe what the problem was. At any rate, he still had to undergo an exercise test, and almost died on the table.

That physician still submitted a report. "That although you have these problems, I'm sure that there's something you can do." The man is in chronic congestive failure, will now have to go through months of process to an administrative law judge.

What I am saying, in summary, on the disability determination unit level is that I think the people automatically disclose these people, and there's a real racket, and if you will pardon the expression, of where these people are sent out to examining physicians and a bill of \$300, \$500 is submitted for 15 minutes of work.

This isn't right, and it's a waste of Government money, and if they had competently looked at this at the DDU level, this would not have happened.

The third comment that I have to make is at the administrative law judge level. I feel that the judiciary in this country is probably the one profession that I feel is untainted. However, I am beginning to change my opinion on that when I run into a lot of administrative law judges.

Most of them are my friends, but yet the one that you know about here in the city of Albuquerque has repeatedly stated—and he stated this on the record, and now the record has been lost, I think—although this is going to district court, that he will not award a disability status to a Spanish individual.

I understand he does the same things on the blacks in the southern part of the State. I know of only one case that he has awarded a decision. I know of several cases of where he has ridiculed the professional people that testified for these individuals.

One of the cases was a Mexican national who could not read or write, had a first-grade education, who had paid into Social Security for many years, with a severe problem. He decided even to ridicule a University of New Mexico Medical School professor who testified for me, my report, plus myself.

He said he wanted another examination; sent this man to what he thought was a specialist; was not a specialist. The man traveled 100 miles each way. He didn't get a favorable report out of him. He sent him to another doctor who told him that he was completely well and could work.

The same doctor—he doesn't know this yet—6 months before had awarded this man total disability in an industrial case. So this is a real personal situation in many instances, and the people that suffer out of it are the claimants.

And my interest in this testimony and in this case, of course, is that I deal with these people, and these people are honest, and regardless of whether it's a political football or a judge's football or prejudice or what, I think these things should be eliminated and a better process of judgment should be allocated.

Also, I am sure that you are aware of—I was talking with your administrative assistant earlier, in Washington—that quotas have now been assigned to these judges and this is unfortunate, because if you've got x number of people and you're only going to allow x number of people to be passed per month, that's not right.

My fourth comment, of course, lies exactly with the medicare administration in this State. I back him up on the attorney's fees. I've worked with about 30 attorneys on Social Security cases. If one is particularly successful, Social Security will start holding up his payments and it may be 7 to 12 months before he even hears anything. This is deliberate. There's no question about it.

As far as medicare payments to clients and things, we file—our practice in our office, if we don't accept an assignment, is to give the claimant a copy of the insurance report. They will go to the medicare people at Equitable and say, you know, "Why haven't I been paid? This claim was submitted 18 months ago."

"Well, your doctor hasn't submitted it," and he said, "Oh, yes, he has, because here's a copy."

"Oh, I'm sorry. Our computer lost it and we found it." This has happened on a number of occasions.

And the reason that the profession—speaking for a number of us—are very unhappy with medicare is not only the bureaucracy and the paperwork, but it's the endless things that happen. For example, I made a house call the other night at 2 o'clock in the morning. I spent 2½ hours on it. That was a medicare-medicaid patient which I have to accept assignment on.

The essence, essentially, of that story: I'll be paid \$11 for that call. This is why your physicians won't make house calls, but when you bring all these people into emergency rooms and into hospitals, you quadruple their care, so my urging on this whole thing is: Let's get back to the basics and treat human beings as human beings.

Let Congress become aware of this problem and get into the bureaucracy and tell them, you know, "Let's simplify this and let's get it into a working status." It works in other countries and it can work here.

But I feel that we're all one country, and if we put our heart to it, I think something can be done.

I thank you for the privilege of being here.

Senator BINGAMAN. Thank you, doctor. Let me just ask: Some of the testimony—and I think some of your comments support this, too—are along the lines that you have the Social Security Administration using doctors who then, for a fee, are going to find against the annuitant, the person receiving the benefits; that this is a very cozy, unprofessional relationship in that the doctor who has been referred the case by Social Security knows that he must continue to find against the recipients if he's going to get more cases.

Is that an adequate paraphrase of the problem, as you see it, and if so, what do we do about it?

Dr. NOVOSAD. That is a total, absolute, 100 percent correct statement.

I think the basic thing that should be investigated is the DDU system in Albuquerque itself. The case I told you about yesterday, competent physicians, Los Alamos, Presbyterian in Albuquerque, myself; all of this data was submitted to the Social Security.

Yet, as you say, they send it out. This is where the money's spent. I think somebody should ride herd on the DDU people in Albuquerque and say, you know, "It's not a matter of employees or employment. There are plenty of people down here who would take 5 seconds to look at that claim and realize that this gentleman meets the law of disability."

But, as you say, it's a real racket. I don't have the answer to that. This is something that I think somebody other than myself really should look into. I can furnish you reams of paper of where this has happened on case after case, but I don't know how you're going to get rid of it.

Senator BINGAMAN. Is there a way that you could require that the doctors in these cases that are referred to by Social Security be chosen on a random basis some way or other, instead of having this kind of self-selection process, which I guess is what's occurring? The testimony seems to point out that the Social Security Administration, if it wants to get people off the rolls, can continue to try doctors till it finds one that turns everyone down; then use him consistently.

Dr. NOVOSAD. I think that the whole thing, Senator—if you'll pardon this statement—boils down to this original thing—and I'm not either taking President Reagan's or the Democratic Party's side in this—but when all of this first started, Senator Martinez, who is a Santa Fe State senator here—and I'm sure he would not mind my quoting this—he said: "You know, the President went at this the wrong way. He should have gone and showed the people where the problems were," and the problems lie in these areas that you're talking about.

Specifically, in answer to that particular question, the only thing that I can tell you is this: I see repeatedly the same physicians. Social Security asked me three times to be one of their physicians. I'm busy enough without working for them, and I told them no, because I deal in this problem.

And you're right. It is the same physicians. The physicians are friends of mine. They're not basically dishonest. They just really don't know how to write a Social Security report. I'm trying to get this incorporated in geriatric meetings, but it's not going to solve the problem nationally.

But I think it's still going to be, as long as Social Security says, "Disqualify these people," they're going to continue to find doctors who will do their hatchet work. I don't have an answer.

Senator BINGAMAN. OK.

Mr. BURKE. May I speak to that, Senator?

Senator BINGAMAN. Sure.

Mr. BURKE. In 1973, and again, I believe, in 1979, the Social Security Administration published statistics of relative success of claimants, and these statistics include relative success by the claimant at the administrative hearing by himself or herself, with a doctor with him or her, with a lawyer, with a combination of doctor and lawyer.

And, if I recall, the percentage for someone who's represented by anyone exceeds 60 percent of these hearings. I mean, with a lawyer, I believe they go past 70 percent. A Freedom of Information Act request that was complied with recently told me that the administrative law judges here in Albuquerque have reversal rates—that is, rates in favor of the claimant—which vary from 60 percent to 90 percent, depending on the administrative law judge.

I would suggest, in response to your concern about doctors, that the Administration make readily available to representatives and claimants the percentage or the track record of all persons involved in the claims process, the doctors, the consultants, the judges, so that we have a real good idea of what our respective chances are in claiming out statutory entitlement.

I would also suggest, by the way, with respect to these percentages—I see Senator Domenici's statement that during the 1970's, 20 percent of recipients were ineligible. I suggest that's a statement from the

Social Security Administration which indicates that 20 percent of the people who were on the rolls at any particular time were kicked off.

I would suggest that that 20 percent, as we figure them, is substantially less, had they had the appropriate representation.

Thanks.

Senator BINGAMAN. OK. Did you have something else, Doctor?

Dr. NOVOSAD. Yes, I want to make one comment; two things.

I think the blue manual, which is what I go by, which is what you all in Congress have written us to judge by—when someone comes to me, I tell them, “You either meet the law, and I’ll fight all the way for you, in my opinion,” or, “I don’t think I can help win this case for you.”

The thing I think what is important is that the people at the disability determination unit be made aware of what the law is. Congress has passed the law that if they meet these qualifications they are disabled. They should not ever allow those cases to even go to an examining physician; only if there’s some question.

But, of course, the situation here is that everybody is kicked off, and I might also add—and I was asked to bring this up—the judge who was supposed to testify here was given 17 cases to hear in this city in 3 days.

Yesterday evening he called me and there was no way I could reach you, Jeff, to say that I don’t think he’s coming, and he said that, “I don’t think I will be able to be there today. As you know, they’ve hounded me.”

This judge has been attempted as—there have been two assassination attempts on him. I don’t know by whom, but the essence to the story: “I don’t think I can be there today, because,” he said, “I’m pretty tired and I’m pretty shook up, because when I got back to Albuquerque yesterday, I was thoroughly remanded for being 20 minutes late at my hearing in Santa Fe the first day because of the fact that I was delayed in traffic.”

Now, this was by his superiors in Albuquerque. So you see, you have this whole thing. It’s a ball game, and it’s an attempt on everybody’s part in these different levels to discredit the other people or else to set quotas.

And if we’re going to do this, we’re going to make the President mad; we’re going to make Congress mad; we’re going to make you mad as an individual.

I think they should sit back, take a look at their jobs and their responsibilities, and go from there, but I don’t know how you’re going to handle this. I don’t have a solution to it.

Senator BINGAMAN. I don’t know that I do, either. Let me just ask one more question before you leave, both of you:

Jim, you were saying something about this Appeals Council. It seems from the testimony we’ve heard today that a good share of the problem seems to be with backlog and arbitrary action by the Appeals Council in Arlington, and I don’t know the extent to which that is the problem. I mean, it just occurs to me that we’re sitting here in Santa Fe identifying numerous cases which are sitting up there in Arlington.

There are an awful lot of Santa Fe’s around this country, and you multiply that by the number of people in the country, and you have—

we must have an unbelievable backlog of cases sitting around back there in Arlington.

I don't know if anyone has accurate statistics on that, but that's something that certainly seems to me to need looking into.

Mr. BURKE. I'm sure they do, and I'm sure there were—these statistics are available either to your office or to citizens under the Freedom of Information Act.

Senator BINGAMAN. Well, thank you very much for the testimony. I appreciate your coming today.

Dr. NOVOSAD. Thank you, sir.

Senator BINGAMAN. OK. Next we're going to have Mrs. Levi Flores of Chama, Angelina Martinez of Arroyo Seco, and Jose Maestes of Albuquerque, if they're here.

OK. I don't have any preference as to what order you folks want to go in.

Angelina, did you want to start? You've got the microphone there. Go right ahead.

TESTIMONY OF ANGELINA MARTINEZ, ARROYO SECO, TAOS COUNTY, NM; JOSE MAESTES AND ANGELA MAESTES, ALBUQUERQUE, NM; AND MRS. LEVI FLORES, CHAMA, NM

Mrs. MARTINEZ. Senator, my name is Angelina Martinez from Arroyo Seco. Arroyo Seco is about 10 miles from Taos.

Senator BINGAMAN. We all know Arroyo Seco.

Mrs. MARTINEZ. And I'm very glad to know you and I'm very glad to give you my thanks, because you helped me get my Social Security that was going to—well, they want to give me for September, but then I wrote Ernest Ortega, and he recommended me to you, and you helped me, and I am so glad, and I am very proud of you, too.

Senator BINGAMAN. Thank you very much.

Mrs. MARTINEZ. Well, my Social Security was cut about \$20, and my grandson's Social Security was cut, too. It was cut \$26, too, but—well, thank goodness because of you.

And I want to thank Becky Bustamante, too. She helped me a lot, and she is still helping me. Every time I get a letter from Social Security, I talk to her on the telephone, and she helps me, and, well, I'm very sick, as you can see, and I need an operation so badly on my knee.

And the Social Security people say that I can't have my medicare card until I'm 60, so I don't know how I'm going to do it. I'm only 58 now, and to wait 2 more years with this pain, I don't know what I'm going to do.

So I'm asking you to help me, and thank you very much.

Senator BINGAMAN. Thank you very much, Angelina. We appreciate your coming today.

Mr. Maestas.

Mr. MAESTAS. First of all, Senator Bingaman, we'd like to thank you for this opportunity of our being here today, for all of us to listen to our testimonies, what's happening, and what they are doing with us, you know, on the Social Security disability.

First of all, my name is Jose Maestas. I'm 60 years of age. I was injured on the job in 1978. I cannot perform my kind of work because I was hurt on my back.

From my back came down a numbness feeling of my two legs, which I was weak. I had had arthritis for a long time, but I could cope with it, but once I hurt my back, I couldn't cope with my things, any kind of work.

I don't understand why they took my Social Security away from me. I was getting disability Social Security insurance. I got hurt that year, was July 1978, but they took it away 1980—they took it away 1982.

And today I am in the same condition which I was in, but I am worse now. My hypertension has gone up more and more. I've been having more trouble with my heart. So, therefore, I cannot perform any kind of work.

I put a request for reconsideration to the disability determination unit at the State agency, but I was denied on June 29, 1982. And again I was denied October 27, 1982.

Then I appeal again, this time to the administrative law judge. That was Judge Philip Flemming, of which he was my favorable decision. He approved my disability on June 21, 1983. Then they sent my records to Arlington, VA, which they send me a letter from Arlington, VA, stating that I wasn't disabled anymore.

Now it's still pending, that decision, because I put another registration back over there. It took them 60 days to respond to me. Then they only give me 20 days for me to get my records that they didn't have over there from the VA hospital.

They only give you 20 days to send them back, but thanks to your office in Albuquerque and thanks to Gloria Cox, that she really was on the job, and she call over here and told them to give me an extension.

So they did. So finally that decision is still pending, I hope. I mean, I don't know what's going on out there, but then I'm still a patient—outpatient at the VA hospital. I go there for treatment every 30 days, 12 months a year.

So this last time I went, I was talking to my doctor up there, and he said that he was going to extend my medication for another 6 months. He was going to hold back those 6 months or talk to Arlington, VA, because the people in Arlington, VA, was giving him a hard time to cut the veterans out from being treated at the VA hospital.

So he said, "If this going to happen, I hope that you can cope with your disease that you have, because you won't be able to get any more medication at that time." So the way I understood him, that the people from Arlington, VA, were going to take those medications away from the veterans there, too, you know, at the VA hospital.

But then another case, I got another friend of mine that he was really hurt. He got three surgeries on his back, and he has diabetes. He's going blind. He cannot walk. He cannot do nothing, and they took his Social Security away again, you know. That was Mr. Seifredo Lovato in Corrales, and he's really hurting real bad, you know, but I don't think that appeal would be today, but he told me to speak to him, you know, on his case.

But then, anyway, that is the case that's happening to me, you know. They've been switching me around. I guess they trying to play dice with us or something. I don't know. But I haven't heard anything from Arlington, VA, just up to now.

Senator BINGAMAN. OK.

Mr. MAESTAS. And that's all I have to say, because the rest of it, you have at your records at the office in Albuquerque.

Senator BINGAMAN. Well, thank you very much for testifying. We appreciate it very much.

Mr. MAESTAS. And also this is my wife, Angela [indicating]. She's also disabled, but she's under SSI.

Senator BINGAMAN. I see.

Mr. MAESTAS. And she's diabetic; she's blind in one eye, and she's got surgery in one foot, and they want to do surgery on her right hand, so—I mean, we're really hurting. If they don't come up with something with the Social Security, we are really hurting, you know, because SSI doesn't send us too much money, and the other pension that I have from the VA is not much either.

You know, so—and this is my wife. I don't know if you want—

Mrs. MAESTAS. Well, I just wanted to tell him that I've been forced to go to work, and you know, I work for 4 hours even though I'm hurting, my foot hurts, but I figure I have to work, you know, in order to help my husband, and because I know that he can't work at all.

And so I have to go—I feel that I've been forced to do it, because once I go home and I can't do not even the housework or nothing. I just have to lie down. I can't sleep. I need something to sleep, because of the pain that I have in my foot every night.

Senator BINGAMAN. OK. What kind of work are you doing for 4 hours?

Mrs. MAESTAS. Well, I'm taking care of people, you know, from the senior citizens.

Senator BINGAMAN. I see.

Mrs. MAESTAS. They have a special room there that they call it day care.

Senator BINGAMAN. OK.

Mrs. MAESTAS. And so I take care of them, you know, and I have to do a lot of walking, you know. I have to lift them, you know, and that's a lot of pressure on my foot.

Senator BINGAMAN. Sure.

Mrs. MAESTAS. And when I go home, it is just awful.

Senator BINGAMAN. OK.

Mrs. MAESTAS. And so I've been going through a lot, too, but I feel that I have to so I can help my husband, you know.

Senator BINGAMAN. Sure. Well, thank you both very much.

Mrs. Flores, would you please give us your testimony?

Mrs. FLORES. Thank you. First of all, I want to say thank you for the opportunity to be able to meet you, and thank Lola Waldon for bringing me here.

As of December 8, I went in for a cyst, to have it taken out, and from there, they found that I had lung cancer. So within that week, that same week when they did the first operation, 2 days I didn't know whether it was a dying cancer or a regular.

So I have two kids still at home, and the only thing I could think of: Who's going to want them as much as I do? Two days later they found out that it was operable. It wasn't malignant.

So they went ahead and they scheduled me for the operation, taking tests and stuff for about 4 days before the operation. And it come out OK and everything since then.

I was in the hospital for 19 days longer if they would have, you know, made me stay there, but I didn't want to, so they let me come home, and my sisters were able to help me to, you know, tend for myself and everything. And I tried to go back to work in March. The end of March I went back to work and I couldn't handle it.

I wasn't able to do my job or carry the load that I normally could. So in May I went ahead and I applied for the disability, Social Security, and they told me that automatically the first time that I would apply they would turn me down.

So I said, "Well, what's the sense of me applying if I'm going to get turned down?" Well, that's just one of their procedures that you have to go through. And they also told me that even if I did get approved, that there would be no medical help at all. So if I had any insurance to go ahead and keep it, if I was able to, which without a job you can't keep the insurance up, so I had to drop all of it.

And I just can't believe that, you know. What do you have to do to get help? I've always been able to help others. I've never had any use for the help myself. But I don't know.

After seeing all these people, it's funny. You can't get help for them. I wish I could have my life the way it was before. I didn't ask for this. I would prefer to work.

But if I can't handle it, my kids have to have some kind of support somewhere, and if they keep turning you down like I have had doors shut in my face since December, I'm afraid to go anywhere, because they're going to turn me down anyway, so what's the sense of even bothering?

But yet at the same time, my kids have to have a chance, and if you would—if there would be some kind of help that I could get from you to let them know—they only give me like 1 to 5, and then 33 percent afterwards. I have to support my kids. I'm the sole supporter of them, and if I only have 5 years, maybe I'll be lucky and I'll live over that, but my kids are still small enough to where they can't help themselves.

And I'm sure that nobody else is going to want them as much as I want them, and if I would be able to have the help that I need now, maybe I could teach my kids to tend for themselves when they're a little bit older to where they won't have to depend on anybody for help that I can't get now.

I don't think that's fair for the Social Security people to try to play God and expect me to just die just because they don't want to pay something that I've worked for all my life since I was 15. I've never had any use for any of the welfare or unemployment or anything, and I've gone through all those channels to get help.

Finally, the welfare did start helping me first with food stamps and up until last month, I started getting some cash, and I was able to start doing a little bit of something. But I feel that I'm taking money from someone else's need, because the Social Security doesn't want to carry me on that.

I've worked for all this. I feel that I've earned it. I haven't taken any help from anywhere else before this, and I would really—if it was up to me—would be working right now. But it's not my choice, so the only thing that I can do is just come to you and say, hopefully, that you'll be able to help my case.

I'm waiting right now to go to court, and from that I've had to hire a lawyer to represent me in court, because I don't feel that I can do enough for myself. I haven't accomplished anything on my own, so I figure maybe someone with more knowledge can help me better than just help myself on that court.

Thank you.

Senator BINGAMAN. Mr. Rosenstock is your attorney?

Mrs. FLORES. Yes.

Senator BINGAMAN. Yes, he spoke to me about your case, so we hope we can do some good in helping you.

Let me thank each of you folks for testifying today, and let you know we're going to try to help in each of the cases and also to help with any other problem.

Thank you very much for testifying and coming.

Mr. MAESTAS. Thank you.

Mrs. FLORES. Thank you.

Mrs. MARTINEZ. Thank you.

Senator BINGAMAN. At this point we have Judge Philip Falvey, who is here in the audience. I would like to have him come forward and discuss the administrative law judge aspect of this a little bit more.

We appreciate your coming, Judge.

TESTIMONY OF F. PHILIP FALVEY, ADMINISTRATIVE LAW JUDGE, ALBUQUERQUE, NM

Mr. FALVEY. Thank you, Senator. I appreciate your invitation to appear here today, and I would like the record to reflect that I am appearing as a witness on behalf of the Association of Administrative Law Judges in HHS.

Senator BINGAMAN. You might pull that microphone over, in case anyone in the back of the room is having difficulty hearing. Thank you.

Mr. FALVEY. People usually don't have much difficulty hearing me.

Senator BINGAMAN. Can you folks hear back there OK? I guess they can. You're right.

Mr. FALVEY. I have been authorized by Charles Bono, who has appeared before the Subcommittee on Oversight of Government Management in Washington, to appear here today and testify on behalf of the Association of Administrative Law Judges.

Also, my Regional Board of Governors authority, Judge Robert Mills in Fort Worth, TX, has authorized me to appear here today.

I would like this record to reflect that no other judge in the Office of Hearings and Appeals has been authorized to appear here today and testify as to the association's position in this matter.

For the record, my name is F. Philip Falvey. I'm an administrative law judge assigned to the Office of Hearings and Appeals, 5000 Marble NE, suite 301, Albuquerque, NM 87110.

Senator Bingaman, I would like to perhaps follow Judge Bono's format in his statement on behalf of the Association of Administrative Law Judges before the U.S. Senate Committee on Governmental Affairs.

This is his statement of June 8, 1983, and I believe that it's part of the record in this proceeding.

Senator BINGAMAN. That's right.

Mr. FALVEY. I became an administrative law judge in November 1971. I was selected from a GS-15 to 16 register, took the appointment in Albuquerque, NM, in order to return to my native Southwest, and I liked the idea of hearing "people" cases.

I had been involved in regulatory matters in Washington previously. I have been stationed in Albuquerque since November 1971, and over the years heard hundreds—multiplied into thousands now—of cases in some 24 counties in New Mexico, the 3 northern counties of Arizona, and portions of west Texas.

The Administration was in the bite when I came on board in 1971; title 18 had gone into effect. We were up to our necks in medicare and medicaid cases. I had heard many, many cases in the first few years involving emergency care, certification of hospitals—Hillcrest in Silver City; the little hospital in Belen; Gerald Champion in Las Cruces.

Of course, we had our title 2 work and our RSI work, the retirement benefits. Thereafter, the Administration accepted the black lung burden. Hundreds of us were detailed to Appalachia. I spent a long period of time in Logan, WV, hearing black lung claims, widows' claims, and disposing of a tremendous volume of applications. And when I say, "disposing," I think some of it was disposal work. These hearings were scheduled quickly. Very often involving people with very meager resources, education, and gathering documentation and appropriately developing those cases was a difficulty.

Thereafter, we came into the so-called "rollback era," when title 16 took over the rollback of the State welfare cases. This was a horrendous load. As a matter of fact, I heard the first rollback case here in Santa Fe in 1976.

So what I'm saying is, Senator, this Administration has always had a backlog in the 12 years that I have been with the Administration.

Senator BINGAMAN. The Social Security Administration is what you're referring to?

Mr. FALVEY. Yes, sir. In 1975 we were greeted by management techniques which, in my view—and I have never been a manager or a supervisor. I'm just a lawyer. But we have been prodded by management techniques which burn the barn to roast the hog; crash techniques; spending tremendous amounts of money on crash-type programs, expeditious in nature without long-range planning.

This has not changed since 1975, and, of course, currently we are faced with the cessation crunch. You have heard four very sad situations here this afternoon while I've been present. I heard 47 of them last month, Senator, and put out 34 decisions, and I am a low producer in the eyes of this agency.

In addition to these management techniques, there has been built up a huge heirarchy of statistic-gatherers and number-counters. I often wonder that if these resources could be more better spent out in the

field, because this is where the action is. The action isn't in Arlington, VA, or Baltimore, MD. The action is out here.

In addition to these management techniques and this heavy bureaucracy of figure-keepers and statisticians, the judges have been subjected to heavy pressures. These pressures have been described as counseling and retraining. I went to a seminar in Kansas City last January. Three days I listened to "personal goals." I listened to non-acquiescence. I listened to policy statements which go around the Secretary's own regulations, and I never once heard the words "due process."

Now, this is what I believe is the shortcoming of current management in this agency, and this has existed since 1975. Your concern over the cessations and the rights of your constituents under titles 2 and 16 of the act are well founded. I could sit here this afternoon and testify to similar matters that I have heard from border to border in New Mexico. I don't think I need burden the record with horror stories, but these are human beings and cases of very inhumane management practices by the Administration which have resulted in a great deal of harm to individuals.

The review practices, again, are a management tool. I am very proud to say I'm a Bellmon judge. I'm under Bellmon review.

Senator BINGAMAN. What exactly does that mean?

Mr. FALVEY. We are a distinct group of judges, Senator, who are under 100-percent review.

Senator BINGAMAN. That means everything that you decide they review?

Mr. FALVEY. Everything I decide favorably to the claimant. I have never had a decision which was favorable to the Administration's position come back in Bellmon review. I have no quarrel with the Bellmon amendment. I think it was a good piece of legislation.

I agree with Charles Bono that it has been misconstrued and misinterpreted by the administration of this agency. Bellmon judges are subject to high statistical accounting. Bellmon judges, of course, perhaps are looked down upon by some of their colleagues.

As I say, I'm very proud to be one, because I would feel I wouldn't be doing my job out here properly if I weren't under review.

Another source of irritation to the administrative law judges is using these statistics to play the old carrot and stick game with judges. The stick to move you and the carrot as a reward, without any regard to thoroughly developed cases, just, fair, and well-considered and accurate decisions.

The bottom line, Senator, is numbers. And, as I say, this is nothing new. We've lived with this since 1975. Also, this agency, as you're aware from Judge Bono's testimony, has brought adverse actions against a number of judges solely on productivity. I know of no case where they've brought an adverse action because of shoddy work, short shrift hearings, failure to properly perform one's duties.

As you know, the administrative law judges have been forced to hire counsel and bring an action against the Administration, which I believe has been set for trial in December before Judge Greene in the U.S. District Court in the District of Columbia.

Currently, this matter is in the deposition stage. I understand a number of judges in this region have been deposed. After my testimony here today, I may well be.

The judges don't like to sue the agency that they work for, Senator. I don't like to be a part of that litigation, but it had reached the point with the quotas, the management techniques, the productivity pushes, that the judges felt that there was a definite impingement upon our judicial independence, and that this action had to be brought about. The judges also, 65 percent of which my association represents, are most appreciative of Capitol Hill, your subcommittee, for looking into this matter, because, in my view, the majority of judges have tried very conscientiously to serve the Government and the claimants in spite of all these agency pressures.

It is my view, Senator Bingaman, that deep in the hearts of the administrators in Baltimore, MD, they do not want Administrative Procedures Act, administrative law judges hearing these cases; that they want an in-house adjuster-type adjudicative process, people that can be controlled by grading qualifications, salary, et cetera.

Currently, thankfully to the Administrative Procedures Act, we are free of this type of harassment. I urge you strongly, and I urge your committee to turn over to the Judiciary Committee your findings and conclusions and push for the establishment of a separate corps of administrative law judges to hear the appeals in the Department of Health and Human Services, because I fear that if this action does not take place, that many of us may be worn down.

It's amazing, Senator. We have six to eight judges leave every time the internal house publication comes out. I see six to eight judges retired. There didn't used to be six or eight judges retiring a year 10 years ago. We have judges go out on disability. We have judges quit; go back to practice. We have judges who have been hospitalized. A colleague of mine in this region was hospitalized for weeks in a serious depressive state. No family problems; no financial problems. What was it? Stress.

I heard earlier this week a colleague of mine in Philadelphia died. We had a judge die in Albuquerque 2 years ago; serious hypertensive condition. I attribute the stress of the job, in part, to his serious condition.

I'm not here to poor-mouth for myself or my colleagues because, believe me, Senator, I appreciate the seriousness of the problem, as I'm out in the field hearing these cases. And, in the past 15 months, I have been on road itineraries 1 full week, and many months a second week, plus hearings in Albuquerque in between.

I am currently carrying a docket of 260 cases, which is 100 too many. The cessation cases—now, these are ballpark figures, Senator. I don't have Lou Hayes' excuse of a broken-down computer—ballpark figures—my last itinerary to Farmington and Shiprock, over 50 percent of those hearings involved cessation of benefits, either under title 2 or title 16. Sixty-five percent of those cases should have never gone to hearing. The claimant either met the Secretary's own listing of impairments under appendix P; the State agency's own consultative examination stated that the claimant was impaired from any type of

sustained, gainful employment; or, last, the claimant met the Secretary's regulations under the vocational guidelines.

Now, this would be a significant decrease in my workload if, at the initial and reconsideration level, these claims had been properly handled. When I used to go to Arkansas, Louisiana, and east Texas to hear cases, I would brag on the New Mexico State agency as to thorough development and proper adjudication. I don't brag anymore.

I realize the State agency is a tool of the Administration. Lord only knows the pressures that they are under. Now, the face-to-face reconsideration, I have been told by substantial members of the bar in Albuquerque that it is an exercise in futility to even appear at a face-to-face recall. These are employees of the Administration, hired, screened, and indoctrinated by the Administration.

I only see the face-to-face recalls when they appear as an exhibit in the file before me. The ones I have seen, they aren't worth the paper they're written on. They're a fill-in-the-blank form with no rationale whatsoever.

Now, Senator, I believe every trial judge should be reviewed, and I have no quarrel with the Bellmon review. However, when it comes to credibility, hearing, seeing, observing, and the taking of testimony is mine. And when they are remanded back strictly on the basis of credibility by the Appeals Council, I think this is a travesty.

The Appeals Council doesn't see, doesn't hear, doesn't observe, and never has the opportunity to make a judgment on credibility. Unless that record reflects gross error on my part, credibility is not an issue before the Appeals Council.

I think we are blessed in New Mexico with a very fine Federal judiciary, and the Federal courts bounce the Secretary back quite frequently. I think we are blessed with a very fine and aggressive bar in New Mexico. Fortunately, I believe that of 20 cases set in Albuquerque the first week of November, 19 out of 20 represented. That makes one hat come off for me.

Many, many of the cases we hear, Senator, of course, are people with cultural-language limitations and no representation. Legal services north and south, legal services in northern Arizona, all do a fine job. I understand that they have budgetary problems.

I think, Senator, I've talked enough. I'm certainly here to answer any questions that you or your staff might have, sir.

Senator BINGAMAN. Well, I appreciate your testimony very much. Obviously, you're very familiar with the problem and have a great grasp of the difficulties we're trying to deal with.

Let me just ask a question. There's a letter here that I have dated September 16 where two members ranking Democrat and the chairman of the subcommittee that I am on, the Subcommittee on Oversight of Government Management. In the letter they sent to the chairman of our Governmental Affairs Committee in the Senate, and they say in here—and I'd just like your reaction to this, if you would—it says:

The subcommittee's minimum finding is that the SSA is pressuring its administrative law judges to reduce the rate at which they allow disabled persons to participate in or continue to participate in the Social Security disability program.

And then they say:

The Social Security Administration has been successful in its efforts, as evidenced by recent statistics showing a dramatic decline in the administrative law judge allowance rate in the past year and a half from 67.2 percent in mid-1982 to 51.9 percent in June 1983.

I'm just interested in your view as to whether, in fact, this pressure that you somewhat described—and that's referred to here—is intimidating some of your colleagues? Are some of the other judges in the system being intimidated, or pressured into finding against the beneficiaries, the recipients of these benefits to a much higher degree than they did before?

Mr. FALVEY. Well, first of all, speaking for myself, Senator, I probably write a tighter decision now than I did 5 years ago. By tighter, I write—try to write a reversible-proof decision.

I have heard stories of judges being counseled to reduce their allowance rate. I have heard stories of judges being told that their allowance rate is too high. These are hearsay upon hearsay stories. Senator, I have never experienced it personally, but I have good cause to believe that a dramatic drop in the national allowance rate certainly must be caused by people fearful of their employment or their work circumstance, or receiving the stick, rather than the carrot.

Now, I have two things I wish to raise in that respect: After two very disruptive visits to the Albuquerque hearing office, the assistant chief judge, J. Robert Brown, was here two consecutive March's; March 1979, March 1980.

Both of his visits were quite disruptive to the clerical, to the professional, and to the judges, because there was only one major thrust of both of these visits, and that's that Albuquerque was a low-producing office.

After his second visit, Judge Brown wrote me and advised me that unless my productivity increased, that he would have to reduce my staff. I do not have a copy of that letter, Senator. I'm afraid I lost some of my judicial temperament that day and filed it in the wastebasket.

But I did send word back to J. Robert Brown that the next letter he wrote me to be sure to copy the New Mexico congressional delegation. I haven't heard back from him.

I also am in receipt of two memoranda from my regional chief judge, Harold G. Adams, in which it appears that Regional Commissioner Martha McStein, April 16, 1982, was concerned about my posthearing development requiring vocational evaluations. I use the facility at Roswell. There's a facility available at Las Cruces. And, by the way, the New Mexico facilities are excellent.

There was a followup memorandum, July 16, 1982:

I wish to call your attention to my earlier memorandum of April 16, 1982, by which I forwarded inquiry and materials from the Regional Commission relating to your request for vocational evaluations.

Senator Bingaman, I never replied to that first or second memorandum, because I know Hal Adams quite well. I respect him, and I didn't want to write him that I considered his correspondence a judicial impingement upon my decisional responsibility.

Now, that's pressure, but, no, I have never been told to allow less, Senator, I couldn't tell you what my allowance rate is. It's over 50

percent. I don't have time to read last month's decisions or to take count on how many I granted or how many I didn't grant.

Senator BINGAMAN. Judge, let me ask you about one other subject here: This Appeals Council which reviews cases where you find with the recipient, do you have any idea of the extent of the backlog at the Appeals Council?

We've had testimony here today of 8 or 10 individual cases where people were saying that they are waiting for some word out of the Appeals Council, and it struck me that if we have that many just out of this room, multiply that times the whole country, and we've got an awful problem. I don't know if it's productivity. I don't know what it is.

But we've got an awful problem with something there at the Appeals Council level. I'd be interested in your reaction to that.

Mr. FALVEY. Senator, nothing against your worksite, but I left Washington in 1971 and have never been back since. I am told—and, again, this is hearsay upon hearsay—that the Appeals Council handles hundreds of files per week; these files are ghosted by analysts; and that a diligent, hard working Appeals Council member would have a very difficult time absorbing what's in those files.

Now, again, Senator, that is hearsay, but this is what I am told by people who have served on the Appeals Council and by people who go back to central office frequently. I have never gone there.

I will tell you this: I am writing in three circuits, the fifth, the tenth, and the ninth. The ninth is a *Finnegan* circuit. *Finnegan* says you cannot, Madam Secretary, cease these benefits unless there was error or unless there is substantial medical improvement.

I have been trying to convince the Appeals Council for months that *Finnegan* is the law of the land in Arizona, because Arizona is in the ninth circuit, and I can't write non-acquiescence opinions.

There's a place in Safford, AZ, and I don't wish to be escorted there by a Federal marshal being in contempt. I'm told that two district court judges in Phoenix have told the assistant U.S. attorney who has argued non-acquiescence in two cases of mine that were appealed up in Phoenix, "Don't ever come in here again with non-acquiescence."

Now, to the best of my knowledge, the Appeals Council doesn't know about *Finnegan*, and I have written paragraph after paragraph and page after page. So I can't give you much insight into the Appeals Council.

All I can say is I'm told they handle a voluminous load of work. To the best of my knowledge, Senator, there are very few of them that are Administrative Procedures Act judges, if there are any. I don't know. I've only met one or two of them over the years.

However, I know what you're referring to. I heard a consolidated case at Brimhall Coyote Canyon Rehabilitation Center, a very, very fine effort by the Navajo Tribe and other community services. This was strictly an economic case, Senator.

With the disability issue there was no problem, but because of an internal memoranda by a Commissioner Sandy Clank in Baltimore, the Gallup district office, I believe, was notified that cessation should be taken against 23 mentally and physically disabled Navajos who were residents of this center. This resulted because of a conflict in the bureaucracy over what were BIA funds, what were SSI funds, and what were tribal funds.

I consolidated these 23 cases, heard them in Brimhall. They were represented by counsel. We made a fine record. Fifteen months the Appeals Council sat on that matter before issuing a decision reversing them. That matter is presently pending in the U.S. district court in Phoenix, as it was joined with a similar action which arose at St. Michaels, AZ.

So my answer would have to be that the Appeals Council is overworked at best.

Senator BINGAMAN. I appreciate your testimony very much. If you have any other statement or anything else you'd like to get in the record here, we will certainly be glad to accept that as well, and I hope we can do something to deal with some of the problems you point out.

Mr. FALVEY. Well, Senator, I thank you. I think I've talked enough this afternoon, and I thank you for your courtesy.

Senator BINGAMAN. We appreciate your taking the time to do this, and we appreciate very much your insights into it.

Mr. FALVEY. Thank you, sir.

Senator BINGAMAN. There's one more panel here, and then we may have another person or two to testify, but on this panel there are four people I know have indicated a desire to testify: Tim Duran from Aztec; Max Martinez from Vadito; Gregorio Vigil and Antonio Pacheco of Taos.

And if you folks could come forward and take a chair, that would be great.

OK. Let's see here. Mr. Martinez, would you want to go ahead? You have the microphone there. Why don't you go ahead and tell us whatever you have.

TESTIMONY OF MAX MARTINEZ, VADITO, NM; GREGORIO VIGIL, TAOS, NM; AND TIM DURAN, AZTEC, NM

Mr. MARTINEZ. Well, I want to thank you for trying to help everyone here. My main problem is that I look normal. I'm going to swear to you and to my Heavenly Father that I've been living in pain since I had my back surgery, which was about 12 years ago.

I got hurt up on the Questa mines, and finally I had to have an operation, and that was in 1971, and at that time, the doctors made a decision that I couldn't go back to Questa again, to the Questa mines, where they are really earning the money now.

And they put me on Social Security for a while, and then I tried to retrain myself, as an electrician, and I was learning pretty good, but with the code they have in the State and what you got to do—and this hand is weak [indicating] and I couldn't work on the panel box—so they decided to put me back on Social Security. They found that my hand was weak, and they figured I was going to get hurt, and it was no good for me, so they put me back on Social Security again.

So when they passed these new laws, they called me back for a physical, you know, and to me, what they're doing is an injustice. They're just calling the people, you know, just to get out of it. They call you up so the doctor can check you out and then in 30 days they give you a notice that you're not disabled.

It's happening to everyone, not only to me. The whole Nation is going through that, and they're not going by doctors' reports. They are on my hearing. They had physical reports, medical reports—I mean false reports of doctors that I had never seen in my life, and they had another report from Saint Joseph Hospital which was false.

And I told Mr. Falvey—the one that just stepped out—that those were false reports against my case, and they told me they were going to get them out of my file, but when they made their decision, they went by that report.

And after that, I went and to tell you the truth, I've been looking for justice. I don't know where I'm going to find it. I was looking for somebody to prove that I have been living in pain all the days of my life because I feel there's not a single soul in this world who believes me, the way I walk.

I have to be taking sleeping pills every night and am on pain pills, and I've been that way for 12 years. And, anyway, I went and looked for a neurosurgeon in Albuquerque, and while I was looking for a neurosurgeon, I stopped by the back—physical therapy—school to get information where I could find a doctor that would examine me. So they made an appointment for me. I told them the story, what was going on with my back; that I was living in pain every day of my life; I had been living since I had the surgery, and I told them that I had had these computer x-ray scans and it showed that I was living in pain, but that I was fighting my case and I couldn't win.

And they said, "Do you have those x rays with you?" I said, "No. I could get them. I could bring them back by tomorrow." So I went to Taos and brought my x rays down, and the next day they gave me a physical. They measured me in different ways and bent me in different ways and finally they referred me to another doctor who made his decision.

So when the doctor examined me, I asked him, "What did you find out?" He didn't say anything. I told him, "My Heavenly Father knows that I'm living in pain." I told him, "I got to face him someday, and you're going to have to face him someday, too, so if we have to go through another surgery," I told him, "let's go through it. I want to be a man again. I want to support my family again. I have not been a beggar all my life," I told him, "I used to be a man that earned good money.

"I've been living—and at that time I told him—"I've been living for 17 months without any help from the State or the Federal Governments. All I've been getting is cheese and butter, and that only once in awhile." I am really depressed with the unjust things they're doing here to disabled veterans, the old people, and the disabled workers.

These things are injustices. I know I'm lost in the hands of man, like I told you before, but not in the Kingdom of God. I will be blessed up there some day. I think that I'll be crowned for what they've been doing with me. I have lost my credit. I can't even see a doctor now because I don't have no money to pay them.

I can't even get my own pain pills or anything like that. Nobody wants to see me because I don't have any money, and I don't know what's going to happen. It's injustice to me.

Senator BINGAMAN. Let me just——

Mr. MARTINEZ. And those letters that I gave you awhile ago; all I want is justice. I look normal and everything, but I'm living in pain and God knows better that I'm going to have to face him one day, and what can I do? That's why I say to you people and to my Heavenly Father, because I'm telling the truth and there are a lot of people in my same shape that they don't believe.

I don't buy a car because it has a good horn. I check it over before I buy it to find out if it is what they tell me. But they're not going to buy the doctors' reports.

Senator BINGAMAN. Let me ask you. Do you have an appeal pending with regard to—

Mr. MARTINEZ. Well, I went through that, and I have. My last chance now is on the Federal district court.

Senator BINGAMAN. I see.

Mr. MARTINEZ. I've been suffering 22 months now.

Senator BINGAMAN. Without any benefits?

Mr. MARTINEZ. Without any benefits at all. I've been selling what I have, borrowing whatever I can. That's just injustice.

Senator BINGAMAN. Sure.

Mr. MARTINEZ. If I was healthy enough, I have the experience to go into a mine in Questa right now where they're really earning the money. But I'm not the same man as I was in 1971. That's all I have to say.

Senator BINGAMAN. Well, thank you very much for testifying here today. We appreciate it.

Mr. Vigil, did you want to go next?

Mr. VIGIL. When I was in back, Senator Bingaman, I thought it was my hearing or the acoustics, but it happened in here, I think, that people get a little bit nervous because they're sick. They don't speak up. You see these people who have been exposed to these types of things, it comes easy to them. They can explain their situation quite easily.

And like the administrative law judge a few minutes ago, Falvey, I believe, I think I met with him before in some of the cases that I have had reviewed.

I'm from Taos County. My name is Gregorio Vigil. I'm a paralegal, and I'm a VISTA volunteer. I have been able to confer—have conferences, on the average of 10 conferences a month regarding disability cases—no, less than that—since I started with VISTA about April 1982.

Before that, I did not—I have everything documented here. I have copies of everything, and in the other part of Taos County where I work, in the vicinity of Taos, some of my neighbors in Penasco I have seen too, but I haven't had occasion to go visit them there. But some are from Arroyo Seco, right in Taos, Talpa, Cordillera, Rancho de Taos, Llamito Quemado, and all those little villages surrounding Taos.

I have made it on a one-to-one basis, visiting their homes, because some of those people are so disabled they can't even get out. They have no way of defending themselves. Again, bureaucracy doesn't give them a chance. They send them a notice. Finally they find them somebody who will read them that letter. They have a 28-day or 10-day limit. If they don't comply with that within 10 days, they are put off the rolls.

They are told that, no, they didn't reply to that letter. They no longer are eligible for any type of benefits. They have to start the process, the procedure all over again. I'd say in Taos County we have a population of approximately 15,000. I think right around the vicinity of Taos, in 24 months, just on disability I have had conferences with many different people, two of whom are in this room right now, about 250 conferences, and even representing them before an administrative law judge, of which two fairly good cases were accepted and the claimants are receiving some disability payments.

Some others have been dropped for awhile. Another review, another review, but most of these people, I'm saying, from what I know, from my county over there, a great majority of those people in rural areas cannot afford a lawyer. They cannot afford large doctors' bills. They're required to go to a doctor after doctor if they want to prove their case.

If they're sent to Government doctors, which actually, I believe, are controlled by Social Security, they have less of a chance. So these people, little by little, start giving up. I would say that in Taos County, 10 percent of our population is over 65. I would say 80 percent of those people are disabled.

Can we get them any help? They can get food stamps. They can try to get SSL. We have been successful in some of that, but as far as disability and Social Security, very, very few have been getting anything.

I was fortunate to start some legal training through the University of New Mexico, the paralegal program for the elderly at Dixon and in Taos for the last four summers. I've acquired knowledge, but sensitivity, I think, is what we need and commonsense more than anything else.

I think the laws are so strict and so demanding and some people are so afraid of Government that they will not even put in a claim. People are suffering a lot of mental anguish, a lot of distress.

Like this young man right here. They're losing hope in everything. They're losing hope in our democratic process, which we're supposed to have. We're supposed to have some kind of equality and justice.

Some of these people tell me, "How come they can send millions of dollars to Russia in grain and they can't take care of the poor people who are sick in this country?" It's sad.

I have seen appeal cases. The administrative law judges are human. They get tired. Maybe that morning they didn't feel so well. Sometimes they sort of backbite the people and so on.

As a paralegal, one of the judges limits me to the testimony and everything to perhaps 15 minutes. He says, "I have another case at exactly these times. It has to be completed."

You, Senator, have given enough leeway for everyone to present their thoughts and present their testimony, and I think that's part of the democratic process, but when they're inhibited and told you can only do this because you have so many cases that you can take care of that you're supposed to take care of, and you don't, OK. You'll be along with the rest.

And so it's a sort of a demerited type of thing. People are being alienated. People are losing faith in their own Government, and I would plead for all the disabled.

And I was on the disability rolls of Social Security since 1974 to the present. When I turned the magic age of 65 and they say, "Well, right now you're under regular Social Security. You're no longer disabled." Not necessarily so, but just the happy age of 65, I revert to regular Social Security. Otherwise, I would be in the same straits wondering when they were going to call me in and see perhaps if they were going to review all over again and I'd keep wondering again, where's my next meal coming from, and it is a sad situation, and I think everyone in this room and all those people who are disabled, all over the country—but particularly in our own State—are most grateful for our Congress people, especially you, Senator Bingaman, for your representation in our behalf.

Thank you.

Senator BINGAMAN. Thank you very much for that statement. I appreciate it very much.

Tim Duran is very experienced in this, and I've been looking forward to his testimony.

Mr. DURAN. I cannot sit down and talk. I have to stand up and talk, and I talk very loud, so I guess you can hear me all over.

So you know who I am, I was returned from the Philippines as a mental and physical wreck. I was a commando, 2 years fighting the Japanese on the islands. I have been schizophrenic. I have been psychotic. Two-thirds of my stomach is gone. One-third of my intestines is gone. I have liver trouble. I have pancreas trouble. I have hiatal hernia, whatever you want to call it.

They did a review for me at the veteran's hospital in April 1981. I told them, "I am suffering. I have a pain right here [indicating]."

"No. We going to cut you off." I was getting a 50-percent service-connected disability. They were going to cut me off. I said, "But I'm sick. I'm a sick man. There's something wrong with my stomach in here." They said, "Go. Get away from the veteran's hospital."

I said, "Maybe I have gall bladder stones. I want a gall bladder series." They said, "You didn't fight with your gall bladder. Get away. Get away. You got a new car. Go to your doctor over there in Farmington. That doctor can fix you. We pay for the examination over there."

I went to the doctor over there. The doctor charges \$72 for that blood test and all that. The veteran's only pay \$55, so I had to pay them out of my pocket. He said, "I'll schedule you for upper GI series. Go to the hospital over there."

I go to the hospital. I try to charge it to the veteran's hospital. They said, "The veteran's hospital won't pay. You have to pay another \$180."

Later on I wrote to Jeff Bingaman, and goddamn it, I don't know what. There's some magic there, writing to a Senator. They call me in. "Mr. Duran, what do you need? You need glasses?" Darn right they gave them to me. "OK, Mr. Duran. You want your teeth fixed?" Goddamn, look at those teeth there [indicating]. "Mr. Duran, what's wrong with you? Anything you want."

Goddamn it, they call me twice a month over there and they treat me like a king. I don't know what you did, Mr. Bingaman, but goddamn it, that's what happened. I want to thank your Mrs. Bustamente, Mrs. Gallegos, and Gloria Cox. They've been wonderful to me.

I already talked to the man from the office of Mr. Domenici. I went there with about as many cases that you represent, 20 cases that I represent, and jokingly I have a sense of humor. I said, "Look what Reaganomics is doing to these people."

"That's not Reaganomics; it's Carter; 1980 is Carter, 1984 is Reagan."

They said, "Get the hell out of here. I don't want to talk to you no more."

"Goddarn it," I said. "Don't you have any concern for these people here? I am trying to read you some denials here where people are suffering."

They said, "You get the hell out of here," or something like that.

I said, "I'm going to see Manuel Lujan." So, before I got there, that woman had already sent word over there, so they kicked me out, and I came back. But it doesn't bother me.

I have the right to talk for these people. I couldn't bring you 20 people here today. It cost me too damn much. Nobody pays me. I do all this free of charge.

I am concerned in human beings, and nobody pays me anything. I cannot bring and support two or three people on a trip. It cost me \$50, \$60 just to come here to represent the people there.

But I do it for this simple reason: I was a very sick man. I got rehabilitated through Public 16 as a veteran. I was a sheepherder in the country before I went to fight with the marines.

Goddarn it, I fought. Part of my elbow is gone. Part of my looks are gone. I can't even smile at the girls no more. I can't even wink with one eye. I had a hard time, but the Government rehabilitated me.

I had amnesia. I forgot everything. I was paranoid, a schizophrenic, mentally psychotic. In 2 or 3 years, I don't know why, they trained my mind to think pretty good.

So I'm not an educated man, and I don't talk very neat, either, but goddarn it, when they took my stomach out, I prayed to God while I was over there; I said, "Santa Maria, Madre de Dios." And the other marines would be shaking in their boots in their foxholes and tell me, "Tell Maria to help me, too." Goddarn it, that's why we came back, I think.

So that's why I am interested, and I think Mr. Bingaman has seen me with the Navajo people there. I been there to implement Social Security programs, welfare programs with the Navajo Tribe since 1950.

Up to that time, the Indians did not get State welfare, and they had a hard time to get Social Security, because there was no Social Security office over there, and their culture is entirely different. What do you do when a man has four wives? What do you do when a wife has four men? Who qualifies?

What do you do when a man has no birth certificate, no nothing, Indian man? I had to implement—good thing I had Senator Dennis Chavez in Washington, DC. Whenever a person couldn't get his benefits and all that because he couldn't prove that he was an American or born in the United States, because there's no birth certificate, I would telephone Chavez or get in touch of him, and he say, "Those crazy fools." I'm sorry. The Social Security officer, Mr. Garza, is here. He's going to get mad with me. "What the hell you talking about?"

They are Indians. They're not Chinese. They are not Japanese. They are U.S. citizens. Damn it. Take care of them."

But they would think of him. The same thing happen with Senator Montoya. Senator Mitchell, when he was Senator, too. I'm not just going to talk about the Democrats. There are some good Republicans, too.

And I wish I could say that for Senator Domenici. I'm sorry. God-damn it. I have letters, not here, but at home, where he said, "You go talk. I can't do anything. You go to the county office over there, the field office over there, and whatever they say goes."

So I wasn't able to get too far with Senator Domenici. I not only represent Social Security people, I'm a disabled American veteran. I speak for the disabled American veterans all the way through, statewide, and all that.

On Social Security I represent the people in Colorado. I was a representative of the people in Cheyenne, WY. They were recommended to me, and all that.

You see, I've worked welfare programs for 30 years. I was responsible for the conversion of the disabled and the old age assistance into SSI, supplemental security income. I have prelaw, premed training. I don't know how the hell I got educated. I'm not fully educated yet, but that's how I help.

I don't worry now. I have it made. My record trip came through. I have retirement. I have veteran's compensation 70 percent, and I'm going to be 62 next year, so I'm going to get my Social Security. I have a business over there. All my family works. But I don't know.

I'm dedicated because I'm a very sick man, and I want to be active, and I have the challenge. It's a good challenge. I don't know. They've said everything, people. I'm just kind of repeating, but I'm really concerned.

I have a case here where the man has had rheumatoid arthritis for 2 years. He cannot get out of bed 50 percent of the time. Very severe. This is a case in Colorado. I'm saying Colorado, because there it's worse than over here. They tell this man, "While you're severe at this time, it is not expected to last for months, as required by law."

I don't know there was a damn law that said, you know, you're not supposed to be sick, you know, after 12 months, 2 years, like that. OK. I better not repeat cases like that anymore. In New Mexico they have already been repeated, but let me tell you about the other type of redtape, and I'm going to recommend DVR, Division of Vocational Rehabilitation.

What the hell is the Division of Vocational Rehabilitation doing for these people? What have they done? I don't think they do a damn thing. I have a case over here with me. His name—no, I won't say his name, even though I have his—I have his statement over here to represent him.

And here's sometime ago they say, "Mr. so-and-so"—this is Vocational Rehabilitation—"this applicant's disability of lack of education and lack of vocational aptitude makes this case unfeasible, for the reason handicap is too severe."

OK. All of a sudden they say, "You can work." Oh, Mr. Falvey just heard that case. Is he going to go down? Don't go again.

Mr. FALVEY. Tim, I heard you last week in Farmington.

Mr. DURAN. Yeah. Poor man. He has to run away. Yeah. So I took it before Judge Falvey, and this man has rheumatoid arthritis, degenerative arthritis, bone spurs of all the bones in the back, and all that stuff, and I try—we went before Judge Falvey.

I said, "Judge Falvey, this man needs to be examined by a rheumatologist and by a neurologist." So he grants me all that, and the working relationship with Falvey, even though he can't hear my talk, is pretty good. I was tired of hearing him talk. He talks pretty loud, too.

So I have gotten along pretty well, but the redtape, see, is what the hell is Vocational Rehabilitation doing to help these people? I keep referring people over there. They say, "I'm going to give you an appointment 2 or 3 months from now," or something like that. You never see them.

My other question is: What's the Disability Determination Unit doing? I question their qualifications. We have medical reports saying that this man cannot work. Psychiatrists say it; doctors say it; neurosurgeons say it. Do they have that kind of stuff over there? I question—I don't know. I don't know. I'm sorry. They are very nice to me. They provide me with the Disability Evaluation Social Security Book and all that stuff, and I read it, but it's pretty rough.

I read it, you know, and it says there that if you suffer from arthritis, degenerative arthritis, rheumatoid arthritis, that it's not supposed to keep you disabled for over 12 months. I don't know how that's figured. And I want to tell you now as to how the people are coping or having a rough time.

These people are being terminated. Then I take them to the State to apply for General Assistance State funding. The State says, "You go to Social Security, because you're going to be disabled more than 12 months." We go to Social Security. They say, "You're not disabled. Hell with you. We are not going to give you anything."

So then I have been through the State. I have been through here, too, but it takes a heck of a long time. They're the person. What's he going to do? I have a case here where 3 months ago, this fellow, he's only 22 years old, shot himself right here [indicating].

The medical expenses at the hospital there are \$56,000. Nobody's going to touch him. At that time I told him, apply for General Assistance. Apply for Social Security disability because there was a possibility that he was totally paralyzed from the waist down. The bullet was lodged in the back there. He hasn't gotten any General Assistance yet, because they were thinking that he was going to be paralyzed.

And then he told me, "This is redtape." They told me we cannot help him for 60 more days. For 60 days he don't have to take action on it. They have granted 60 days to make a determination. So what's this man going to do? Die, or what?

He carries a colostomy bag over here [indicating], you know. He cannot use his anus. In other words, he uses over here [indicating]. He's staying with friends and all that. Nobody to take care of him. He's only 24 years old. He's not going to qualify for Social Security or disability because I am very glad to say that he's able to work now. He won't be disabled over 12 months, but just to get him General Assistance, what do we do?

I get him cheese. I was working Well World Food Bag out of Albuquerque. I get my truck, load it up over there, and take it over there. I certify people for cheese. I'm retired now, see, so I'm helping all these people, you know, to have something to do, and that's what I'm doing.

I would like to—I don't know how to recommend all this stuff, you know. Why don't we have a Division of Vocational Rehabilitation test people, and if they can be trained, train them and then turn them loose?

Why don't Mr. Reagan sign a bill over there like WPA or something like that where people can be trained or something like that? Let's get them a job like that. Let the Government train them. Why cut them off and let them suffer and make them more sick?

We're not—when you give an aspirin to take care of the headache, you're not getting to the cause of it. Let's get them rehabilitated. I was rehabilitated. I do pretty good, even though I'm 70-percent disabled, but I can speak up and enjoy life.

My dream came true. America came true for a native New Mexican, so I'm really happy and proud to be an American and all that.

So, too, for this hearing, I would like to see what the heck DVR can do for these people. They have been on disability, because this little book of regulations over here [indicating] tells you if you can lift over 10 pounds—I don't care how; if you lie down, you lift it, it's 10 pounds, you know—you cannot qualify for disability for Social Security, you know. That's what this book say.

And then medical cases over here, the same thing. I have psychiatrists say that this man can use his own funds, and they tell the man, "Oh, you cry a lot when you see people. Get a job where you don't see people, and then you won't cry, and you can work." I'm not kidding you. It's here somewhere.

So I don't know where those—that kind of determination comes, you know, but I don't know. Everything that's been said this morning, I get a picture of what's taking place now and I want to offer my services statewide to help people here.

Like I say, I do not believe in keeping people sick or on welfare all their lives or on Social Security. I believe in rehabilitation, because I was rehabilitated. I also worked for the Governor's commission for employment for the handicapped state-wide, sent a lot of people to Washington over there when Carter was there.

And although the public programs, I think President Johnson was there then after Kennedy, I worked for 2 years, title 5, rehabilitating mothers that went on welfare, training them to work.

A lot of them went to be practical nurses, a lot of them. They got going, and it's really beautiful when they no longer have to depend on outright welfare or when we no longer have to depend on our Social Security.

It is terrible when you have no self-confidence and when you are a resource that can be rehabilitated. So you can keep going. You feel proud like me. I am very proud to be an American, and I might as well tell you, it hasn't been easy.

I was discharged from the Army in 1946 without the stomach and all; that I suffer a hell of a lot. I can go 6, 7 years fairly good. Then I go down with paranoia. I talk to God. Goddamn it. We have a nice conversation over there and all that stuff; schizophrenic and all that stuff,

and then he gets me down, and I probably see that I was going to write my own Bible, and I'm going to do—goddarn it. Maybe I do.

I'm having a little fun. I'm not crazy. Don't get me wrong, but I'm talking to you because it makes me feel bad, and I think Mr. Bingaman has seen me talking to the Navajos over there, Navajo, telling them, "I help you for 30 years. I'm not retired. If you want to continue to be able to help you, vote for these people," and I think they voted.

I think they voted for him [indicating]. I don't know. Maybe that's why they voted for him, but they did pretty good.

OK, Mr. Bingaman.

Senator BINGAMAN. Tim, we appreciate your testimony very much.

Mr. DURAN. All right, sir. Yes, and when you have hearings in Washington, if you can use me there on this, let me know.

Senator BINGAMAN. We'll get you back there. We sure will. Thank you very much.

Mr. Vigil, did you have something else?

Mr. VIGIL. Yes, just one little thing: I think it was related by one of the ladies or someone suggested this. We have a judicial system in this country—the judge and a jury.

Something similar, perhaps, like a jury of peers could review a case like that and recommend to an administrative law judge. I don't know if that would help or not, but it was just a thought brought out.

And I wondered if it would be worthwhile considering.

Senator BINGAMAN. Thank you. I appreciate that.

I think that's really all the questions I had of you folks. I appreciate your testimony very much.

I had a note given to me here that Mr. Gregory Webb was in the audience and might want to testify, also. Is that the case, Mr. Webb?

Mr. WEBB. Yes, sir.

Mr. BINGAMAN. Why don't you come down here?

Is there anybody else in the audience who—let me say that at the end of this hearing, we can still take a written statement from anybody who has a written statement or a letter or something that you would like to submit, so we can print it in the record.

So you don't need to give it here orally in order to get it in the record, but if anybody else wanted to go ahead and testify today, they're certainly welcome to do that. Otherwise, we'll just hear Mr. Webb, then conclude the hearing.

Mr. WEBB. Thank you, Senator Bingaman.

Senator BINGAMAN. Go right ahead.

TESTIMONY OF GREGORY WEBB, FARMINGTON, NM

Mr. WEBB. The reason I came in today was I didn't know about the hearing in Farmington last week or I'd have been there. I'm from Farmington.

I filed for Social Security again 11½ years ago when I became disabled. I first became disabled in 1970, and I had a piece of pipe fall on me and snapped my neck. I was off work for 11½ years and was denied Social Security benefits then.

I managed to return to work. I went back into construction work. I fell and injured my back. They did two back operations, fused it, but they did a screw fixation. They put screws in the back, and bolted the bone together.

I was granted Social Security then, and because I didn't stay on it, they give me 100 percent, total disability, because I didn't stay on it and I went back to work and managed to go back into my craft as a pipefitter, go back into my craft and take it easy trying to guard that back.

I reinjured this neck again in January 1982, and I have still been continuously denied, and I asked them about the previous doctors' reports, and they said they did not take that into consideration, that my reports were all in Baltimore, MD; and that the only consideration they took was from this last injury, and when I was working, I was having to take the medication all the time I was working and everything.

But I was still able to perform enough to get by on, and after I was denied my Social Security, I applied for my union benefits. I was denied them because I was denied Social Security, and the union—we have an annuity fund that they take out and you participate in, and I have approximately \$4,000 in that now, and they tell me that I have to be off for 3 years before I can get that.

Well, if I'm off 3 years, I don't need that darn stuff, because I'd be starved, already dead. And since then, they've expelled me from the union, but they continue to hold my benefits, and I still have been denied Social Security.

Now, I've got to go back. I just got out of the hospital last week from having another myelogram. They can't find the cause of the pinched nerve and I've got to go back to Durango now to another specialist where he's going to run the things up and down through there, the electrical muscular graph, and electrical nerve graph.

And I feel that because I was trying to go back to work, and able to and did for a period of almost 2 years, that it's a liability that anybody that's on Social Security to get off of it, and if they think they can make it, and then if something else happens and then be turned down to where you can't make it, because now I haven't just lost my Social Security benefits; I've lost my union book, my trade, and everything else.

The doctor requests that I be rehabilitated into another field. I've been trying to go back to college for about 1½ years. For an old man, I did pretty good. I had a "B" average in electronics, but the courses that I'm having to take now, I can't sit through, because they're 4-hour courses, and I can't get anything from DVA or anyone else.

And I think that I've just been disregarded, really, because I've started work when I was 9 years old, and I'm 50 years old now. I've been paying into Social Security for 41 years. That's a long time, and—

Senator BINGAMAN. Let me ask, Mr. Webb: You applied for Social Security and were turned down? Did you go through the appeal process also?

Mr. WEBB. Yes, sir. I sent back an appeal and it was turned down the second time, and they told me I'd have to go before a trial judge, and they told me I would have to come into Albuquerque to do it, and at the time I wasn't able to travel.

Senator BINGAMAN. And when was that that you made the application and were turned down the last time?

Mr. WEBB. That was about 7 months ago.

Senator BINGAMAN. OK. Have you talked to any of my offices about this case at all?

Mr. WEBB. Not until today; no, I haven't.

Senator BINGAMAN. OK. Well, I hope we can get all the information from you before you leave here and see if——

Mr. WEBB. I have the complete medical records of all the surgery and everything, and where the doctor has give me 100 percent total disability from any type of manual labor, but like the man said, he said, they tell you you can lift 5 pounds, you can go back to work.

But they don't tell you where you can find a job.

Senator BINGAMAN. Well, I thank you very much for coming down here today and testifying.

Mr. WEBB. OK. Thank you, sir.

Senator BINGAMAN. I realize it's a long way from Farmington, and we appreciate your being here, and Tim came down from Farmington, also, and we appreciate that.

Let me just say here, to conclude this hearing, as any of you who have sat through here today are well aware, the problems we're talking about are really the most dominant kind of problem that we are hearing about in our offices.

We have four offices here in the State, and I think that's a sign of the difficulties that exist in this review process that the Social Security Administration is engaged upon.

I do think that some changes are needed, both in the way the program's administered, and perhaps some changes are needed in the statutes which govern the way the program can be administered, in order to see to it that abuses or arbitrary actions are not taken in the future.

We will sift through the testimony today and come up with the specific things that we're going to be able to try to do and to deal with it, and we will be sending each of you a copy of the record today if we can get your name and the mailing address, so that you'll have a complete record of all the testimony that was given today, and anything else that was submitted for the record today.

We'll also try to notify each of you as to what the followup action we're going to take to try to deal with the situation. I appreciate you all coming and listening to the testimony and giving testimony.

I know that these are very painful experiences for people to have to relive, but I do think it's helpful to us.

Let me also say that I appreciate very much Governor Anaya's having a representative here, Senator Domenici's having a representative here, and we appreciate working with their offices on these same problems, and Congressman Richardson's office, as well, and we thank you once again for coming, and we hope you'll stay in close touch with us.

The committee will stand adjourned.

[Whereupon, at 4:30 p.m., the subcommittee was adjourned, subject to reconvene at the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF U.S. SENATOR PETE V. DOMENICI

SANTA FE, NEW MEXICO

OCTOBER 8, 1983

THERE ARE FEW PROBLEMS MORE PRESSING THAN THE WELL-BEING OF DISABLED AMERICANS. I WANT TO COMMEND MY COLLEAGUE, SENATOR BINGAMAN, FOR CONDUCTING THIS HEARING ON PROBLEMS IN THE SOCIAL SECURITY DISABILITY PROGRAM. I REGRET THAT I COULD NOT ATTEND, BUT MY DUTIES AS A COUNSELOR TO THE PRESIDENT'S BI-PARTISAN COMMISSION ON CENTRAL AMERICA PREVENT ME FROM APPEARING IN PERSON.

IN MY TRAVELS ACROSS NEW MEXICO OVER THE PAST YEAR I HAVE LEARNED THAT THERE ARE SERIOUS PROBLEMS IN THE WAY THE SOCIAL SECURITY PROGRAM REVIEWS THE ELIGIBILITY OF DISABLED AMERICANS FOR BENEFITS. I AM DEEPLY CONCERNED ABOUT THE NUMBER OF INDIVIDUAL CASES WHERE A GENUINELY DISABLED PERSON HAS ABRUPTLY HAD HIS OR HER BENEFITS TERMINATED. IN ROSWELL, FOR EXAMPLE, ONE INDIVIDUAL WAS DROPPED FROM THE DISABILITY PROGRAM DESPITE THE TESTIMONY OF THREE DOCTORS THAT HE WAS TOTALLY AND PERMANENTLY DISABLED.

CASES LIKE THIS ARE MORE THAN ISOLATED INCIDENTS. SIMILAR SITUATIONS OCCUR ALL ACROSS THE STATE AND THE NATION. IN FAR TOO MANY INSTANCES, THE DISABILITY PROGRAM IS BEING ADMINISTERED WITHOUT ENOUGH COMPASSION TOWARD THE PEOPLE IT IS INTENDED TO SERVE.

THE SOCIAL SECURITY DISABILITY INSURANCE (DI) PROGRAM IS THE NATION'S LARGEST DISABILITY CASH BENEFITS PROGRAM. UNDER THE DI PROGRAM AND THE SUPPLEMENTAL SECURITY INCOME PROGRAM FOR THE BLIND AND DISABLED, THE SOCIAL SECURITY ADMINISTRATION MAKES NEARLY HALF OF ALL BENEFITS EXPENDITURES FOR PUBLICLY FINANCED DISABILITY PROGRAMS. THESE TWO PROGRAMS, WHICH SHARE MOST OF THE SAME RULES AND REGULATIONS, WILL PROVIDE \$23.3 BILLION IN BENEFITS TO 6.2 MILLION DISABLED RECIPIENTS ACROSS THE NATION IN 1983. THESE TWO PROGRAMS ARE THUS THE MOST IMPORTANT ONES FOR THE DISABLED. THE MEDICARE AND MEDICAID PROGRAMS ALSO PROVIDE VERY IMPORTANT HEALTH BENEFITS FOR THE DISABLED.

THE SOCIAL SECURITY DISABILITY PROGRAM WAS ENACTED INTO LAW IN 1956. IT GREW RAPIDLY AND WAS POORLY ADMINISTERED DURING THE 1970s. DURING THE CARTER ADMINISTRATION, FOR EXAMPLE, AS MANY AS 20 PERCENT, OR ONE IN FIVE, OF THE 2.8 MILLION PERSONS THEN ON THE ROLLS, WERE INELIGIBLE. THIS WAS CONFIRMED BY STUDIES DONE BY THE GOVERNMENT ACCOUNTING OFFICE AND OTHER AGENCIES. SOME ESTIMATES OF INELIGIBILITY, IN FACT, WERE AS HIGH AS 30 PERCENT.

PRESIDENT CARTER INTRODUCED AND CONGRESS PASSED AMENDMENTS IN 1980 THAT WERE INTENDED TO CUT BACK ON EXCESSIVE BENEFIT LEVELS, WORK DISINCENTIVES, AND APPARENT WEAKNESSES IN THE WAY THE PROGRAM WAS ADMINISTERED. PRESIDENT CARTER SIGNED THESE CHANGES INTO LAW ON JUNE 9, 1980.

ONE PROVISION OF THIS LAW HAS BEEN THE SOURCE OF CONSIDERABLE ATTENTION--THE REQUIREMENT THAT THE STATUS OF DISABILITY BENEFICIARIES BE REVIEWED AT LEAST ONCE EVERY THREE YEARS. THESE REVIEWS ARE KNOWN AS CONTINUING DISABILITY INVESTIGATIONS, OR "CDIs".

THE REVIEWS BEGAN IN MARCH 1981, NINE MONTHS BEFORE THE DEADLINE SET IN LAW. THIS WAS IN DIRECT RESPONSE TO A GENERAL ACCOUNTING OFFICE REPORT WHICH URGED THAT THE SOCIAL SECURITY ADMINISTRATION (SSA) DIRECT ALL AVAILABLE RESOURCES TO THE REVIEWS. THE GAO REPORTED THAT:

AS A RESULT OF SSA'S LIMITED FOLLOW UP ACTIVITY AND POOR MANAGEMENT OF THE CDI PROCESS, AS MANY AS 584,000 BENEFICIARIES WHO DO NOT CURRENTLY MEET SSA'S ELIGIBILITY CRITERIA MAY BE RECEIVING DISABILITY BENEFITS. THESE BENEFICIARIES REPRESENT OVER \$2 BILLION ANNUALLY IN TRUST FUND COSTS.

ALTHOUGH THESE REVIEWS SERVE A VALID PURPOSE, THE APPARENT MISMANAGEMENT OF THE DISABILITY REVIEW PROCESS HAS RAISED BENEFICIARY, PUBLIC, AND CONGRESSIONAL CONCERNS. NUMEROUS, WELL-DOCUMENTED REPORTS REVEAL THAT THE EXPANDED REVIEW PROCESS HAS CAUSED MANY BENEFICIARIES TO LOSE THEIR BENEFITS WITHOUT MUCH WARNING AND IN SOME INSTANCES WITHOUT MUCH EVIDENCE THAT THE INDIVIDUAL IS NOT DISABLED.

RECENT STUDIES BY THE GENERAL ACCOUNTING OFFICE ALSO SHOW THAT MANY MENTALLY IMPAIRED PEOPLE HAVE LOST THEIR BENEFITS BECAUSE OF FAULTY GUIDELINES. THESE GUIDELINES MAY HAVE IMPOSED A MUCH TOUGHER SET OF ELIGIBILITY RULES FOR THE MENTALLY IMPAIRED THAN OTHER DISABLED PERSONS.

CONGRESS AND THE REAGAN ADMINISTRATION HAVE BOTH ACTED TO SOFTEN THE IMPACT OF THE REVIEW PROCESS. THE SOCIAL SECURITY ADMINISTRATION (SSA) WILL BEGIN IN JANUARY TO CONDUCT FACE-TO-FACE INTERVIEWS WITH ALL BENEFICIARIES SCHEDULED FOR PERIODIC ELIGIBILITY REVIEWS IN SOCIAL SECURITY DISTRICT OFFICES. AS MANY OF YOU KNOW, NEW MEXICO SERVED AS A PILOT STATE FOR THIS EFFORT. ALL OF THE FEEDBACK I HAVE RECEIVED IS THAT THE NEW MEXICO PROJECT WAS VERY SUCCESSFUL. SSA ALSO REDUCED THE NUMBER OF DISABILITY CASES SCHEDULED FOR REVIEW, AND DELAYED REVIEW OF TWO-THIRDS OF THE MENTAL IMPAIRMENT CASES UNTIL NEW RULES ARE DEVELOPED.

THIS YEAR, THE CONGRESS ENACTED LEGISLATION WHICH ALLOWS TERMINATED DISABILITY RECIPIENTS TO CONTINUE TO RECEIVE BENEFITS UNTIL A DECISION ON THEIR APPEAL HAS BEEN MADE. I SUPPORTED AND SPOKE IN FAVOR OF THIS LEGISLATION ON THE FLOOR OF THE U.S. SENATE. BEFORE THIS LAW, BENEFICIARIES LOST THEIR BENEFITS WITHIN TWO MONTHS OF AN UNFAVORABLE REVIEW. EVEN IF THE RECIPIENT WAS LATER REINSTATED TO THE ROLLS, HE OR SHE OFTEN HAD TO LIVE WITHOUT ANY BENEFITS FOR SEVERAL MONTHS.

I DOUBT THAT MANY HEALTHY AMERICANS COULD SURVIVE WITHOUT THEIR PRIMARY SOURCE OF INCOME FOR FOUR, SIX, OR EVEN EIGHT MONTHS. YET THAT IS WHAT HAPPENED TO MANY DISABLED OR MENTALLY IMPAIRED AMERICANS.

THIS LEGISLATION WAS ONLY TEMPORARY, BUT JUST THIS PAST WEEK CONGRESS REAUTHORIZED IT UNTIL DECEMBER 7. BY THEN, THE APPROPRIATE CONGRESSIONAL COMMITTEES WILL HAVE TIME TO PREPARE A PACKAGE OF LEGISLATIVE CHANGES TO REFORM THE SOCIAL SECURITY DISABILITY PROGRAM.

TODAY'S HEARING WILL HELP ESTABLISH A SET OF FACTS ABOUT THE PROBLEMS IN THE DISABILITY PROGRAM. I WILL REVIEW THIS RECORD CAREFULLY. WE MUST ENSURE THE INTEGRITY OF THE DISABILITY PROGRAM, AND WE MUST, OF COURSE, MAKE SURE THAT THE ELIGIBILITY REQUIREMENTS ARE REALISTIC AND ENFORCED FAIRLY. I AM CONVINCED THAT WE CAN FIND A WAY TO ACCOMPLISH THESE GOALS WITHOUT HARMING SOME OF AMERICA'S MOST VULNERABLE CITIZENS, THE DISABLED.

TESTIMONY OF PAUL FYFE AND DONNA SNYDER
BEFORE THE SENATE GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON CIVIL SERVICE,
POST OFFICE AND GENERAL SERVICES

I. INTRODUCTION

Thank you for this opportunity to present testimony concerning the Social Security Disability retirement determination and appeals process. We work for DNA People's Legal Services, Inc., in Crownpoint, New Mexico. As legal services attorneys we frequently represent Social Security recipients or claimants in appeals procedures. The vast majority of our clients are Navajo Indians who have special difficulty dealing with the Social Security Administration (SSA) because of language barriers, cultural differences, and their extremely isolated residences. In our testimony we will describe some of the problems which our clients encounter in the retirement determination and/or appeals process. We will also suggest means of addressing those problems.

Although this hearing concerns the Social Security Disability (DIB) retirement program, it must be remembered that any changes made in that program do not affect only the recipients of DIB benefits. The changes also affect beneficiaries of the Supplemental Security Income (SSI) program, because both programs are run by the Social Security Administration and the DIB procedures are generally applicable to the SSI program. Since SSI is a need-based program, any action that affects it affects the class of citizens most in need of assistance - the destitute disabled. These people have no savings to fall back on, no investments to cash in, no equity in a home upon which to borrow money. SSI benefits are their only source of income, and any cutoff of benefits has drastic effects on their ability to survive. The SSA has not exhibited any comprehension of the magnitude of the problems it has created for these people through its callous attitude toward

beneficiaries of its disability programs.

II. THE CDI PROCESS

In the past three years huge numbers of people have lost their monthly Social Security or S.S.I. disability check because of the way in which the bureaucracy has administered the disability review provisions of the 1980 Social Security amendments. Publications as diverse as the Wall Street Journal and the Gallup Independent of Gallup, New Mexico have carried articles detailing the destructive effects caused by the massive purges of the disability rolls. These purges were a result of the SSA's Continuing Disability Investigation (CDI) process, which was implemented in response to the 1980 amendments. Many, if not most, of those people deprived of their benefits were still eligible for those benefits; this is evidenced by the fact that a majority of those able to pursue the lengthy appeals process won reinstatement of benefits. Please note that many eligible people were not able to appeal because they were unable to find adequate representation.

Our program has attempted to assist as many people victimized by the CDI process as our limited resources will allow. A few examples of the cases we have handled in the past two years will serve to graphically illustrate the harsh effects of the Administration's heavy-handed implementation of the C.D.I. process.

The first example is a 55-year old Navajo man who was determined to qualify for the State disability program in the early 1970's. He was converted to the federal SSI program in January of 1974. This man suffered from a combination of disabilities as a result of tuberculosis, the surgical removal of one lung and chronic schizophrenia as well as other mental disorders. He has no formal education or training; he is illiterate; he speaks only Navajo. He has formerly worked only as an unskilled laborer and has been unemployed for over fifteen years. He lives in a secluded area in Navajo Indian Country approximately 95 miles from

Gallup and 145 miles from Albuquerque.

In its C.D.I. review, the SSA determined that the claimant was no longer disabled as of May, 1981. An Administrative Law Judge (ALJ) heard his appeal on January 27, 1982. The ALJ issued a decision wholly favorable to the claimant. On August 3, 1982, the SSA Appeals Council improperly remanded (See Section 111 below) the case on the ground of insufficiency of record. The ALJ held a supplemental hearing on March 10, 1983 in Gallup. After receiving written argument of counsel, the ALJ issued another decision, again wholly favorable to the claimant, on April 13, 1983. A period of two years had lapsed since the SSA had arbitrarily terminated this man's eligibility.

The above-described two year process, which severely disrupted our client's life and constituted a drain on DNA's very limited resources, was totally unnecessary. This man's continuing disability should never have been questioned. Controlling federal court case law directed, because he was "grandparented" into the SSI program, that he be exempt from termination unless SSA showed that he was no longer disabled under the state definition of disability or that there was a clear error in the original determination that this man was disabled. The SSA was, and is, bound by the courts' ruling and the administrative policy of "non-compliance" or "non-acquiescence" with federal court rulings was, and is, illegal.

Furthermore, even if the CDI review was defensible, that review should have ended after the claimant's successful appeal to the ALJ. The Appeals Council remand was spurious and contrary to law (See, Part 111, below).

We have attached to this testimony as Appendix A a copy of the memorandum submitted in the above-referenced case. This memorandum illustrates in one case the many ways SSA is violating the requirements of procedure and law in its implementation of the CDI process.

The above-described claimant was lucky. He was an SSI recipient and continued to receive his benefits during the two-year appeal procedure. Unfortunately,

many other disabled individuals subjected to the CDI review drew Social Security Disability Insurance Benefits (DIB). Their benefits ceased as soon as SSA determined that they were no longer disabled. This rule was recently changed to temporarily afford DIB recipients a chance to request continuation of benefits pending appeal. The change in the rule, however, did not help those DIB recipients terminated prior to the amendment and who were, consequently, deprived of their monthly income during the lengthy appeals process. Many of these people were so impoverished as to qualify financially for SSI, but were nonetheless afforded none of the protections available to SSI recipients merely because they had sufficient work histories to qualify for the alternative DIB program.

One example of a person caught in the DIB dilemma is a 50-year-old Navajo man who was awarded DIB effective January 24, 1973 because of chronic indifferntiated schizophrenia and cyanosis and tuberculosis. His benefits were terminated effective August 1981 because his impairment was not considered to affect basic work related function. He appealed the termination and also filed an application for SSI benefits on November 18, 1981. Both claims were denied at the Branch Office reconsideration level on February 18, 1982. An ALJ hearing was held on October 20, 1982 and the ALJ issued a decision wholly favorable to the claimant on October 27, 1982. Due to SSA recalcitrance in effectuating favorable ALJ decisions, this man did not regain pay status until almost May, 1983. This impoverished man was completely without income for almost two years.

Again, the claimant in the above-referenced case should never have lost his benefits. He is 51 years old and attended only one year of school; he cannot read or write. He can neither speak nor understand English. His prior work experience was as a railroad laborer. He has not worked for over fifteen years.

The termination was ostensibly based on an August 10, 1981 consultative examination (CE) ordered by the SSA. the CE was conducted by a psychiatrist

selected by the SSA; he had never treated nor ever interviewed the claimant before. Based on a brief and necessarily cursory exposure to the claimant, the consultative examiner submitted a statement that the claimant behaved appropriately and reacted well. The diagnostic impression was residual schizophrenia; however, the psychiatrist was unable to give an opinion as to the functional ability of the claimant. A second CE by a medical doctor produced a report that the claimant's tuberculosis was inactive but that, in the doctor's opinion, the claimant suffered from a moderately severe psychosis.

The claimant's treating psychiatrist submitted two statements to SSA, reporting that the claimant was psychotic and that he continued to have hallucinations and bouts of paranoia. The treating psychiatrist further opined that the claimant was not able to work because of his mental impairments.

Despite the statements of the treating psychiatrist, as well as the two C.E. reports, the SSA determined in its CDI review that this man was not disabled. The SSA decision was clearly violative of SSA's own regulations and the law as defined by our federal courts. Consequently a severely disabled individual was wrongfully deprived of his sole source of income for almost two years and was forced to depend on the sporadic charity of various other people.

These two cases are illustrative, and sadly typical, of some very basic problems in the CDI process. The facts demonstrate the difficulty SSA employees face when attempting to define impairments. Certainly a 30-minute, one-time meeting afforded in a CE is an insufficient basis for terminating benefits. The bureaucracy is simply not set up to adequately deal with mental disabilities or the special problems faced by disabled Navajo people. Various reports indicate that 500-1500 handicapped Navajos have had their benefits terminated. These numbers reflect only those Navajos who were living in non-profit institutions. It must be emphasized that the results of SSA abuses affect people; sometimes

this fact gets lost in the statistics.

In addition to the inherent inadequacies of the bureaucracy, the many problems in the CDI process are exacerbated by the SSA policy of "non-acquiescence" with federal court rulings. The law should force SSA to either comply with the judge-made law or to appeal decisions with which the SSA disagrees.

Finally, the rigid and complex procedures required to appeal terminations, and to retain payment of benefits pending appeal, demonstrate the critical need for representation. Most of these disabled individuals are not capable of defending themselves or their rights. Free legal services programs no longer have the resources (and may soon be prohibited from such representation by new restrictions) to represent or even identify all claimants in need of counsel. Due process safeguards must be written into the Social Security Act to protect disabled individuals from the various abuses described above.

III. POST-HEARING REVIEW PROCESS

Another example of the SSA's disregard for the procedural and substantive rights of America's disabled poor is its handling of the post-hearing review process. It has utilized this process to accomplish the following: (1) harass successful claimants, and their representatives by ignoring procedural requirements and the law and forcing them to undergo additional costly and time-consuming hearings and appeals; (2) harass its own Administrative Law Judges (ALJ s) by loading more work on them or by subtly or not-so-subtly threatening them with the loss of their jobs and/or reductions in pay.

20 C.F.R. 5416 allows the claimant to request the SSA's Appeals Council to review a decision of an ALJ. The Appeals Council may also review such a decision on its own motion. However, certain procedural requirements must be met. In too many cases the Appeals Council has ignored those requirements. A case in point is the first example given in Section II of this testimony. In that case the claimant won a favorable decision from the ALJ after a hearing. 20 C.F.R.5416.1469

allows the Appeals Council 60 days in which to decide to review an ALJ decision. The Appeals Council ignored that limitation and, 151 days after the decision, decided to send the case back to the ALJ for further fact-finding. Despite the fact that this remand was procedurally defective, the claimant and our office had to struggle through yet another hearing. The ALJ had to attend another hearing and prepare yet another decision, which was favorable to the claimant.

The remand in the above case was not only procedurally defective; it was also substantively defective. The Appeals Council ignored all principles of fairness and common sense in its decision to remand. It stated that there was not sufficient evidence for the ALJ's decision, because the claimant did not attend a scheduled consultative examination or respond to letters in that regard. The Appeals Council ignored the fact that the claimant is a schizophrenic, non-English speaking Navajo with one lung who lives in the middle of nowhere, has no understanding of the meaning of a letter written in English, and has no means of transportation with which to attend medical examinations in Gallup or Albuquerque. It also ignored the substantial medical evidence submitted at the hearing, all of which supported the conclusion that claimant is disabled.

The remand which occurred in that case, which was unsupported in fact or law, is by no means atypical of the manner in which the Appeals Council is exercising its power to review ALJ decisions. Similar abuses have occurred and are occurring all across the country.

As we mentioned above spurious remands such as this create a burden of extra work for ALJs as well as for claimants and their representatives. This can serve to influence an ALJ's decision; the more often an ALJ finds for the claimant, the more cases will be returned to him/her and the more work he/she will have to do.

The SSA has also been much more direct in putting pressure on the ALJs. Those ALJs who frequently decide in favor of a claimant are getting harassed for

their "poor" decision records, and encouraged to "improve" to a certain percentage of unfavorable decisions. As we are sure you will hear from ALJ witnesses, the SSA has also proposed knocking ALJs down the GS pay scale, so their wages will be cut.

All of the above exhibits the SSA's determination to tamper with the hearing and post-hearing process and to deprive claimants of the fair and impartial procedures to which they are entitled. The SSA has become a committed and determined advocate which is opposing, in every possible way, the continuation of benefits for disabled citizens. This advocacy is especially inappropriate where the disabled are non-English speaking people who depend on SSA personnel for assistance in preparing their claims and/or appeals.

IV. DELAYED RESUMPTION OF PAYMENTS

The SSA's determined advocacy is nowhere more apparent to us than in its behavior once a claimant is finally reinstated to disability retirement status. When a person's benefits are restored, the SSA delays as long as it can before it begins issuing checks again. For example, in the second case discussed in Section II above, the claimant won a favorable ALJ decision on October 27, 1982. He did not receive his first check until over six months later. In the intervening period SSA representatives did everything they could to lower the amount of benefits he would receive. They approached him directly instead of through his attorney. They gave him statements for his children to sign, and told him that if they did not sign he would not receive his benefits. What they failed to tell him was that these statements were already written by the SSA employees, and were attestations that his children contributed money to him every month, for his support. They also failed to tell him that if his children signed the statements his benefits would be reduced because he would not be financially eligible for part of those benefits. In fact, his children did not contribute the amounts

claimed by the SSA. This was a case of blatant misrepresentation and a violation of the SSA's own rule that a claimant should not be contacted directly if he/she has obtained representation. In addition it was just plain unfair to try to deprive a helpless destitute person of as much income as possible.

Direct contact of other claimants has also occurred regularly, despite the strident protests of our office. If the SSA were fulfilling its role as guardian of the welfare of these disabled people, direct contact would not be a problem. The SSA's current attitude, however, makes it a big problem.

Even when especially repugnant practices such as the above are not present, the SSA is slow in restoring claimants to pay status. Since the whole operation is run by computers, these delays are difficult to understand. The whole process must be streamlined so that deserving claimants are not subjected to even more hardship after winning their appeals.

V. SUGGESTIONS FOR IMPROVEMENT

Given that the abuses outlined above are merely the tip of the iceberg, what can be done to curb those abuses? Legislative action is necessary, since the current SSA will change slowly, reluctantly, and as little as possible. A step in the right direction has already been taken in the U.S. House, where Congressman Pickle has introduced a bill calling for changes in the appeal-and-review process. We generally agree with the provisions of that bill. However, we would like to suggest a few changes in the bill, and we would also like to suggest some changes in areas which are not covered by the bill.

Congressman Pickle's bill calls for the continuation of DIB benefits following the removal of a recipient from the disability rolls. However, it would only continue the benefits through the recommendation stage instead of the appeal stage. This is insufficient protection for recipients. After the reconsideration stage claimants still have a long wait for their hearing before an ALJ; they should not

have to endure that wait without income. In addition, claimants should not be required to request continuation of benefits within a short period of time. Those benefits should continue unless the claimant requests that they be stopped. The present rule, under the temporary benefit -continuance procedure, states that a claimant must request continuance within 10 days of the date of the notice. Many of our clients do not even receive the notice for 8 or 9 days; they must then find an interpreter and go somewhere (usually our office) for assistance. They cannot meet that stringent time deadline. A presumption that benefits should continue is much more fair than the opposite one, that they should end. This is especially so when a large number of people whose benefits are terminated are eventually reinstated.

SSA should be prevented from exerting pressure on its ALJs to issue fewer favorable decisions to claimants. The fair and impartial hearing system must be preserved. Legislative prohibition of such meddling may be the only answer.

SSA must also be forced to abide by federal court rulings which decide issues of law. The existence of a "non-acquiescence" policy cannot be allowed.

SSA should comply with much stricter standards before a recipient's benefits are cut off. The present system of brief and inadequate consultative examinations by doctors chosen by the SSA needs drastic revision. SSA should be required to consult with the claimant's treating physician or physicians, and to give great weight to his/her opinion. Consultative examinations should be performed only when the treating physician's opinion is equivocal and more information is needed. If such exams are needed, they must be thorough instead of cursory.

All time limits set by the SSA's own rules should be enforced against the Appeals Council. In addition, Appeals Council remands should meet strict standards to ensure that there is a reasonable basis for the remand. Perhaps attorney's fees could be allowed to prevailing claimants for any successful actions which

follow an Appeals Council remand.

Every claimant whose benefits are terminated should have the right to representation. If the local Legal Services offices are over-loaded with work and cannot take the case, private paralegals or lawyers should be appointed and paid by the SSA. This is especially true when the claimant cannot speak or read English.

A time deadline on payment of benefits should be imposed. Successful appellants should not have to wait for months to receive their first checks. If computation of back benefits is the problem, the system should be changed to require immediate payment of the monthly amount, with the back pay to come later.

VI. CONCLUSION

Grave problems exist with the CDI and appeals processes. We hope our testimony has illustrated some of those problems. We will be happy to provide more information and more suggestions to you if you wish to contact us. Thank you once more for this opportunity to present our testimony.

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In the Case of

[REDACTED]

SSI [REDACTED]

CLAIM FOR
SUPPLEMENTAL SECURITY
INCOMEMEMORANDUM IN RESPONSETO ORDER OF APPEALS COUNCILREMANDING CASE TO ADMINISTRATIVELAW JUDGE

The Social Security Administration (SSA) issued a determination that claimant [REDACTED] disability had ceased and that his eligibility for Supplemental Security Income (SSI) ended as of July 31, 1981. Upon a timely request for hearing, the case came before the Administrative Law Judge on January 27, 1982. Judge [REDACTED] found claimant to be suffering a continuing disability and issued on March 5, 1982 a decision wholly favorable to claimant. On August 3, 1982 the Appeals Council remanded the case on the ground of insufficiency of the evidence of record.

I. THE APPEALS COUNCIL LACKED AUTHORITY TO REMAND THE CASE. The order of August 3, 1982 cites 20 C.F.R. §416.1488 as authority for the Appeals Council's action in reopening the Administrative Law Judge's decision. The cited rule is a part of the regulatory scheme denominated REOPENING AND REVISING DETERMINATIONS AND DECIS found at 20 C.F.R. Subpart P, §§416.1487 through 416.1494.

Extensive quoting of the regulations will be instructive:

§416.1487 Reopening and revising determinations and decisions.

(a) General. Generally, if you are dissatisfied with a determination or decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review. However, a determination or a decision made in your case may be reopened and revised. After we reopen your case, we may revise the earlier determination or decision.

(b) Procedure for reopening and revision. You may ask that a determination or a decision to which you were a party be revised. The conditions under which we will reopen a previous determination or decision are explained in §416.1488.

§416.1488 Conditions for reopening.

A determination, revised determination, decision, or revised decision may be reopened -

(a) Within 12 months of the date of the notice of the initial determination, for any reason;

(b) Within two years of the date of the notice of the initial determination if we find good cause, as defined in §416.1489, to reopen the case; or

(c) At any time if it was obtained by fraud or similar fault.

(Emphasis supplied).

As indicated in the above furnished SSA regulation, a determination may be reopened at the request of the claimant for any reason within 12 months of the initial decision. These rules, however, are clearly directed at requests for review made by the claimant. The procedures afforded for reopening a case are available only when the claimant requests the reopening of a prior decision.

After purporting to reopen the case pursuant to 20 CFR §416.148 the Appeals Council then attempts to use the procedure for remand

of a case described at 20 C.F.R. §416.1477. This section is a part of the regulations pertaining to review (not reopening) initiated within 60 days of the hearing decision. . 20 C.F.R. Subpart P, §§416.1467 through 416.1483. These sections provide for parties' requests for review and Appeals Council "own motion" initiation of review. Again, a lengthy quotation from the regulations will prove helpful:

APPEALS COUNCIL REVIEW

§416.1467 Appeals Council review - General.

If you or any other party is dissatisfied with the hearing decision... you may request that the Appeals Council review that action. The Appeals Council may deny or dismiss the request for review, or it may grant the request and either issue a decision or remand the case to an administrative law judge...

§416.1468 How to request Appeals Council review.

(a) Time and place to request Appeals Council review. You may request Appeals Council review by filing a written request. Any documents or other evidence you wish to have considered by the Appeals Council should be submitted with your request for review. You may file your request at one of our offices within 60 days after the date you receive notice of the hearing decision...

§416.1469 Appeals Council initiates review.

Anytime within 60 days after the date of a hearing decision or dismissal, the Appeals Council itself may decide to review the action that was taken. If the Appeals Council does review the hearing decision or dismissal notice of the action will be mailed to all parties at their last known address.

§416.1470 Cases the Appeals Council will review.

(a) The Appeals Council will review a case if -

- (1) There appears to be an abuse of discretion by the administrative law judge;

- (2) There is an error of law;
- (3) The action, findings or conclusions of the administrative law judge are not supported by substantial evidence; or
- (4) There is a broad policy or procedural issue that may affect the general public interest.

(b) If new and material evidence is submitted with the request for review, the Appeals Council shall evaluate the entire record. It will then review the case if it finds that the administrative law judge's action, findings, or conclusion is contrary to the weight of the evidence currently in the record...

§416.1473 Notice of Appeals Council review.

When the Appeals Council decides to review a case, it shall mail a notice to all parties at their last known address stating the reasons for the review and the issues to be considered.

§416.1477 Case remanded by Appeals Council.

(a) When the Appeals Council may remand a case. The Appeals Council may remand a case to an administrative law judge so that he or she may hold a hearing and issue a decision or a recommended decision. The Appeals Council may also remand a case in which additional evidence is needed or additional action by the administrative law judge is required...

(Emphasis supplied).

1. Neither claimant nor other party requested Appeals Council review

As underscored by the provided emphasis in the above quotations, the procedure is provided to a claimant who is dissatisfied with a hearing decision. The wording of 20 C.F.R. §416.1467 is that "you may request that the Appeals Council review that [the hearing decision] action." "You," in this context, applies to the claimant

The Appeals Council order refers obliquely to a recommendation by the Regional Commissioner of Dallas, Texas "that this case be

given consideration by the Appeals Council." The regulations cited above clearly do not provide for initiation of review by the Regional Commissioner, but provide this procedure only to the claimant and other parties. The Regional Commissioner can not be considered a member of the population to whom the term "you" applies.

2. The Appeals Council was without authority to initiate review upon its own motion. 20 C.F.R. §416.1469 expressly limits such an action to "anytime within 60 days after the date of a hearing decision." In the instant case, the Appeals Council took no action until 151 days after the Administrative Law Judge's determination. The regulation obviously precludes the Appeals Council from deciding to review the case 151 days after the hearing decision.

3. The Appeals Council failed to fulfill the procedural requirements necessary for a valid review. Even if the Appeals Council's jurisdiction was properly invoked by a party or by its own motion, the review fails due to another procedural irregularity. 20 C.F.R. §416.1473 expressly requires written notice when the Appeals Council decides to review a case. The notice shall state the reasons for the review and the issues to be considered. Neither claimant nor claimant's appointed representative received such notice.

4. The Appeals Council can not reopen the case pursuant to the procedures afforded at 20 C.F.R. §416.1488 and then remand the case pursuant to the procedures found at 20 C.F.R. §416.1477. As noted above in subparts 1, 2, and 3 of Part I, the Appeals Council was without jurisdiction to initiate the review and remedies available pursuant to 20 C.F.R. §416.1477.

A case can not be vacated and remanded except by compliance with the procedures set forth at 20 C.F.R. Subpart P §§416.1467 through 416.1483. The Order attempts to circumvent the limitation of that procedure by claiming authority under 20 C.F.R. §416.1488. The two procedures, however, are conceptually and procedurally quite distinct. The procedure connected to 20 C.F.R. §416.1488 allows only for the remedy of a revised decision issued by the Appeals Council. Because it was forced to invoke the authority of 20 C.F.R. §416.1488, the Appeals Council did not have authority to remand the case.

II. THE APPEALS COUNCIL LACKED GROUNDS TO REMAND THE CASE.

The Appeals Council stated that it remanded the case on the following bases:

[T]he claimant (sic) symptoms and the physician's conclusion that he is limited to light work are not supported by clinical finding... Further, the claimant did not attend a scheduled consultative examination nor did he respond to correspondence in this regard. Therefore, it is the opinion of the Appeals Council that the evidence currently of record is not sufficient to reach conclusion as to the claimant's residential functional capacity.

A. The claimant's symptoms are supported by clinical findings. ~~XXXX~~ complains that his activities are severely limited due to shortness of breath, fatigue, and dizziness. According to the clinical record found in Exhibit Number 10 in SSA's record prepared for hearing, Mr. ~~XXXX~~ underwent a left pneumonectomy in 1960 for advanced pulmonary tuberculosis. The clinical findings in Exhibit 9 also mention the pneumonectomy, while the medical record which comprises Exhibit 3 refers to the pneumonectomy and to significant

head trauma. According to the medical report found in Exhibit 9, chest x-rays reveal the left pneumonectomy, old tuberculosis in the upper lobe of the right lung, and compensatory emphysema in the middle and upper lobes of the right lung. The clinically evidenced facts that Mr. ~~XXXXXXXX~~ has only one lung which is substantially weakened by old tuberculosis and compensatory emphysema, and that Mr. ~~XXXXXX~~ has suffered significant head injuries, support his claims of shortness of breath, fatigue and dizziness.

In addition to the physical impairments, Mr. ~~XXXXXXXX~~ is disabled by a continuing and long term psychiatric disability. References to claimant's history of schizophrenia pervade the clinical records beginning in November of 1976 (Exhibit 1) and continuing through December of 1981 (Exhibit 2).

B. The physician's conclusion that claimant is limited to light work is supported by clinical findings. Dr. ~~XXXXXXXXXX~~, one of claimant's treating physicians at the Crownpoint Public Health Service Clinic, submitted her professional opinion that claimant "could perform minimal light work only." Exhibit 7. Dr. ~~XXXX~~ provided the bases for her assessment, dated March 25, 1981, in the clinical data as described in her medical report of June 12, 1981. Exhibit 8. These clinical findings include the following: a chest x-ray taken in March of 1981 which showed that the left lung had been removed; previous x-rays which showed old tuberculosis in the upper lobe of the right lung; previous x-rays which revealed compensatory emphysema of the upper and middle lobes of the right lung. Exhibit 8.

The law is well settled that, unless there is good cause to the contrary, the opinion, diagnosis and medical evidence of the treating physician should be accorded considerable weight. Furthermore, the Social Security Act "does not restrict medical investigation, examination and opinion to only things described as 'objective clinical' or 'laboratory findings'" Page v. Celebrezze, 311 F. 2d 757, 763 (5th Cir.) It is clear that a medical opinion does not become unacceptable for the purpose of determining disability simply because it is based on a claimant's symptomology. Stack v. Weinberger, 497 F. 2d 1092 (7th Cir. 1974). Dr. Robb's statement reflects an expert's opinion of the severity of the claimant's various impairments and his ability to adapt to them, and, as such, merits substantial consideration. Vitek v. French, 438 F. 2d 1157, 1160 (4th Cir. 1971).

C. Claimant's failures to attend a consultative examination and to respond to correspondence regarding a consultative examination are not grounds for remanding the case. The record of the case, as embodied in Exhibits 1 through 11, nowhere indicates a factual basis for the statement in the Appeals Council's order that "claimant did not attend a scheduled consultative examination nor did he respond to correspondence in this regard." Neither did the Appeals Council submit any documentary evidence of the alleged lapse to claimant's counsel for approval of inclusion in the record. Even if such documentation existed, claimant's "failures" are not relevant evidence to the issue of whether claimant continues to be so severely impaired as to be precluded from engaging in substantial

gainful activity. Such an irrelevant matter is certainly not germane to the issue of whether the administrative law judge's decision is supported by substantial evidence.

Even if the Appeals Council should consider claimant's failures to attend a consultative examination and to respond to correspondence some how evidence probative of any issue in this claim, the following facts should be noted: Mr. ~~XXXXXX~~ is a 53 year old Navaj man who cannot read or write or understand English. He does not possess a vehicle; even if he did have an automobile, Mr. ~~XXXXXX~~ can not drive and does not have a license to do so. Mr. ~~XXXXXX~~ liv approximately 92 miles from Gallup, New Mexico and over 140 miles from Albuquerque, New Mexico. To date, all consultative examinatio have been scheduled either in Gallup or Albuquerque.

Additionally, the most casual persual of the record reveals that Mr. ~~XXXXXX~~ has a severely limited ability to interact with others, understand simple instructions, or remember simple directions. Should it be proven by evidence admissible in this appeal that Mr. ~~XXXXXX~~ failed to attend a scheduled examination and failed to respond to correspondence, Mr. ~~XXXXXX~~'s "failures" should surely not be attributed to any recalcitrance or lack of desire to cooperate. Mr. ~~XXXXXX~~'s abilities to travel, to comprehend written notices, and to engage in correspondence are substantially limited by the above described factors.

D. The evidence of record was sufficient to derive a conclusion as to claimant's residual functional capacity. Claimant testified to the effect that he could not engage in substantial gainful activity because of his severe impairments as evidenced by shortness of breath

fatigue and dizziness. Mr. ~~XXXXXXXXXX~~ symptoms are substantiated by the clinical and diagnostic findings included in the record. Claimant's treating physician assessed Mr. ~~XXXXXX~~ capacity for work to be limited to minimal light work only and supported her expert opinion with objective, clinical findings. Even if the medical opinion had not been based on laboratory findings, the opinion and diagnosis of a treating physician should be accorded considerable weight in the absence of substantial contradictory evidence. Mr. ~~XXXXXXXXXX~~ symptomology and the opinion of the treating physician serve as sound and amply sufficient bases for Judge Falvey's determination that claimant has a residual functional capacity for at most light work. The judge's decision is only strengthened by the clinical records of chronic schizophrenia.

III. CLAIMANT'S BENEFITS CAN NOT BE TERMINATED ABSENT PROOF THAT HE IS NO LONGER DISABLED UNDER THE PRIOR STATE DEFINITION OF DISABILITY. Mr. ~~XXXXXX~~ received benefits on the basis of disability for at least one month prior to July 1973 under the New Mexico Assistance to Aged, Blind, or Disabled (AABD) Program. On January 1, 1974 he was converted to and began receiving benefits from the newly created federal Supplemental Security Income (SSI) program.

Individuals who are SSI recipients because they were considered permanently and totally disabled as defined under the state plan are commonly known as "grandparentees". These people are entitled to SSI as long as they are continuously disabled according to New Mexico's definition of "permanently and totally disabled" as of December 1973. 42 U.S.C. §1382 c (a) (3) (E), 20 C.F.R. §416.901 (20 C.F.R. §416.939(c)).

That state definition reads as follows:

To be eligible for AABD on the condition of disability, the person must be suffering from a permanent physiological, mental or psychological impairment that, when considered in connection with the pertinent socio-economic conditions, results in his being substantially unable to engage in employment or homemaking within his remaining ability.

As a "grandparentee", Mr. ~~XXXXXXXX~~ is exempt from termination of the SSI program unless he is no longer disabled under the state definition of disability. Mr. ~~XXXXXXXX~~ physical and mental impairments are so severe as to easily fit within this standard. (See, Part II, supra, and Part IV, infra for discussions of claimant's medical and vocational limitations). The law is well-settled that Mr. ~~XXXXXXXX~~ disability benefits can not be taken from him unless SSA provides proof of a material improvement in his condition or proof of a clear and specific error in the initial state determination of eligibility. Finnegan v. Mathews, 641 F. 1340 (9th Cir. 1981); Chee v. Schweiker, ____ F. Supp. ____ (D. Az. 1982); Wheeler v. Schweiker, ____ F. Supp. ____ (S.D. Ohio 1981). SSA has not met this burden of proof, nor even made the most superficial attempt to do so.

SSA is bound by the court's ruling in Finnegan; an administrative policy of "non-compliance" with this federal court ruling is illegal. Chee v. Schweiker, ____ F. Supp. ____ (D. Az. 1982); Siedlecki v. Schweiker, ____ F. Supp. ____ (W.D. Wash. 1982). No cases on this point exist in the 10th Circuit, so Finnegan is the controlling case law. The decision in Finnegan directs that Mr. ~~XXXXXXXX~~ benefits can not be terminated because SSA has not shown material

improvement or a clear and specific error.

IV. THE DECISION BY THE ADMINISTRATIVE LAW JUDGE IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A. An analysis of the evidence reveals that Judge Falvey's determination that Mr. XXXXXX continues to be disabled is squarely supported by the evidence of record. The determination by an Administrative Law Judge is characterized as supported by substantial evidence when it is based on "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971). Because the evidence indicates that Mr. XXXXXX had a residual functional capacity to do at most light work (See, Part II above), Social Security regulations require a finding of disability based on the other uncontradicted testimony. Claimant is an individual closely approaching advanced age and this factor is one which "significantly limits vocational adaptability". 20 C.F.R. subpart P, Appendix 2 Rule 202.00(d). Mr. XXXXXX had no formal education; he is illiterate; he speaks only Navajo. He has a history of unskilled labor and has not worked in the past fifteen years. His vocational scope is so significantly limited as to warrant a finding of disability. Id. As stated in the administrative law judge's opinion "a finding of disability is directed pursuant to Table No. 2, Rule 202.09, Subpart P, Appendix 2, Social Security Regulation No. 4." There is ample evidence in the record supporting the decision that claimant continues to suffer a severe impairment. Moreover, the Administrative Law Judge had the opportunity to observe Mr. XXXXXX, to evaluate his testimony and to consider how that testimony fits with the rest of the

evidence. Special deference is due to the Administrative Law Judge's fact-finding because it is based on the judge's unique opportunity to observe the claimant and make a credibility determination from which to analyze the testimony. Beavers v. Secretary of Health, Education, and Welfare, 577 F. 2d 383 (6th Cir. 1978).

B. The evidence of record submitted subsequent to the hearing January 27, 1982 supports a determination that claimant continues to suffer disability. Dr. ~~XXXXX~~ ~~XXXXX~~, who conducted a consultative examination at the behest of SSA, has the following impression of Mr. ~~XXXXXXXXXX~~:

"Shortness of breath, secondary to left pneumonectomy from old T.B. I gage this to be moderately severe, with dyspnea at rest and increasing dyspnea with mild exertion." Exhibit 15, p. 3 (Emphasis supplied).

Dr. Robinson based his impression on the following objective data:

"There was a long scar on the lateral and posterior aspect of the left side of the chest. There were no breath sounds present on the left side... The patient was mildly dyspneic at rest during the examination.

Dr. ~~XXXXXXXXXX~~'s Medical Assessment of Ability To Do Work-Related Activities (Exhibit 15, pp. 3-4) states that Mr. ~~XXXXXXXXXX~~ is limited to lifting and carrying, pushing, and/or pulling "less than 20 lbs. for short periods only. Would cause dyspnea 2° to his lung disease. Dr. Robinson further assesses Mr. ~~XXXXXXXXXX~~ ability to walk as limited to "short distances only. pt. becomes dyspneic with exertion." Mr. ~~XXXXXXXXXX~~ visual acuity is impaired, according to this physician. Dr. ~~XXXXXX~~ further restricts Mr. ~~XXXXXXXXXX~~ possible work environments: "Dust and fumes would aggravate his chronic cough and shortness of breath." Dr. ~~XXXXXX~~ attached to

his assessment a Pulmonary Function Evaluation to which he subscribes the following interpretation: "Study suggests severe restrictive and moderate obstructive disease... Flow rates are very severely impaired... No significant improvement after bronchoedilator (sic

Dr. ~~Robertson~~'s evaluation is relevant evidence which clearly supports a determination that claimant has a residual functional capacity to do no more than light work. Light work is defined as follows at 20 C.F.R. §416.967(b):

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing or pulling of arm controls. To be considered capable of performing a full or wide range of light work, you must be able to do substantially all of these activities...

In fact, Dr. ~~Robertson~~'s expert opinion would seem to preclude a determination that claimant even possesses the capability to do a full range of light work.

Mr. ~~XXXXXXXXXX~~ residual functional capacity limits him to performing at most light work. Mr. ~~Robertson~~ is consequently disabled according to the medical-vocational guidelines. 20 C.F.R. Subpart P, Appendix 2, Table Number 2, Rule 202.09. (See, Part IV A, above

In addition to Mr. ~~XXXXXXXXXX~~ vocational limitations based on his age, prior work experience, education and physical residual functional capacity, Mr. ~~XXXXXXXXXX~~ suffers from psychiatric impairment as well. Dr. ~~DeVidone & Moxley~~ conducted a consultative psychological evaluation, the results of which are reported in Exhibit 14.

In her assessment of Mr. ~~XXXXXXXXXX~~ psychiatric residual functional capacity, Dr. ~~Murphy~~ determined Mr. ~~XXXXXXXXXX~~ impairment or restriction to be moderately severe or severe in the following areas: estimate degree of constriction of interests of claimant; ability to comprehend and follow instructions on a sustained basis; ability to perform work requiring frequent contact with others on a sustained basis; ability to perform work where contact with others will be minimal; ability to perform complex tasks on a sustained basis; ability to perform varied tasks on a sustained basis. Dr. Murphy further responded "yes" to the question of whether claimant's impairment has lasted or can be expected to last for 12 months or longer at the level of severity indicated. Exhibit 14, pp. 4-5. Dr. ~~Murphy~~ based her estimation of Mr. ~~XXXXXXXXXX~~ capabilities on her determination of his current psychiatric impairment as revealed by psychological testing and a psychological interview.

C. The evidence of record provides substantial evidence of continuing disability. The credibility of Mr. ~~XXXXXXXXXX~~ testimony as to his limitations is strengthened by the clinical evaluations and medical opinions. The judge's determination that claimant is limited to at most light work is supported by the assessment by claimant's treating physician, as well as the reports of two consultative examinations. The record demonstrates that Mr. ~~XXXXXXXXXX~~ continues to suffer both physical and psychiatric impairments which, taken together with the vocational guidelines, render him disabled as defined by SSA.

V. CONCLUSION.

For the reasons set forth above, the Appeals Council had no

power to vacate the decision of the Administrative Law Judge remand the case. Even if the remand was procedurally correct no substantive basis existed to support the action.

SSA did not show that Mr. ~~XXXXXXXX~~ no longer met the impairment standard as defined in the prior state disability definition. Neither did SSA demonstrate that the initial state determination was founded upon substantial error. Absent these showings, Mr. ~~XXXXXXXX~~ is exempted by his status as a "grandparentee" from the necessity of demonstrating that he satisfies the federal program criteria for disability. The evidence demonstrates that Mr. T continues to meet the burden required by the earlier state statute.

Even if Mr. ~~XXXXXX~~ did not qualify for the protection afforded by his "grandparentee" status, the claimant is disabled according to the standards of disability promulgated under the Social Security Act. The substantial evidence of record supports the Administrative Law Judge's determination that Mr. ~~XXXXXXXX~~ continues to suffer disabilities so severe as to preclude substantial gainful activity.

Respectfully submitted,

Donna J. Snyder
 Attorney for Claimant ~~XXXXXXXXXXXX~~
 DNA People's Legal Services, Inc.
 Post Office Box 116
 Crownpoint, New Mexico 87313
 Telephone: 786-5277

Testimony Submitted for Hearing Record

I am submitting this as testimony. The multiple things that are medically wrong with me are as follows:

Poor vision which they are going to try to correct at the Vets Hospital. I wear eyeglasses and can only drive during the day. My left eye is totally blind.

Rumatoid arthritis - treated with medicaiton.

Heart condition - also treated with medication.

Sugar diabetes which is a borderline case. It is kept under control with a strict diet.

Prostate problem - taking medication. I had major operations on four different occassions.

Left foot - has been operated on due to sugar diabetes.

I am also on nervous medication.

I try to stay as healthy as possible through rigorous exercise and diet. I am only living on 160 dollars a month, as my former wife gave me a divorce on the 27th of September of this year. Since I have made the Veterans Service Commission my conservator only until all the bills that my ex-wife was piling on me were paid, I almost went bankrupt in this particular case. That is why I turned to the Vet. Service Commission for my compensation.

I could not keep up with my ex-wife's demands, with her compulsive gambling and buying cars every other year. Therefore, I ask for the relief of my S.S. to cope with my everyday living expenses.

Sincerely yours,

Ernest Z. Sanchez



RICHARD C. LeDOUX
TAOS COUNTY
District 42
P.O. BOX 698
Home Telephone: 505-758-3123
Business Telephone: 505-758-8390
RANCHOS DE TACS, NEW MEXICO 87557

State of New Mexico
House of Representatives

THIRTY-SIXTH LEGISLATURE

Santa Fe
October 20, 1983

COMMITTEES:
Chairman:
ENROLLING & ENGROSSING (A)
Member:
CONSUMER & PUBLIC AFFAIRS
TAXATION & REVENUE

Honorable Jeff Bingaman
U.S. Senator
Washington, D.C. 20510

Dear Jeff:

The hearing of the Senate Governmental Affairs Subcommittee on (Civil Services, Post Office and General Services) was a matter of concern which affects many people in Northern New Mexico as well as the rest of the State. I must apologize for not having appeared at the hearing but to many personal matters interfered. Because of my concern I would like to be apprised of what is to follow and what determinations have been made as a result of the above hearing regarding the Social Security retirement determination.

Senator, should you require my help, please do not hesitate to continue the correspondence and I will always stand ready to respond however I'm able. Give my best to your family for us here in Taos.

Sincerely and Respectfully,

Richard C. LeDoux
Richard C. LeDoux

RCL/11



STATE OF NEW MEXICO

OFFICE OF THE LIEUTENANT GOVERNOR

SANTA FE

87503

MIKE RUNNELS

Lieutenant Governor
President of the Senate

October 5, 1983

The Honorable Jeff Bingaman
United States Senate
Committee on Governmental Affairs
Washington, D. C. 20510

Dear Senator Bingaman:

I wish to thank you for the opportunity to participate in your committee hearings as a witness on Saturday, October 8, 1983.

As a result of a prior commitment, I will be unable to attend your hearings, I would like to submit this letter as part of my testimony.

During the past ten months I have received several phone calls from citizens around New Mexico who have expressed their concern about the way in which their appeals were handled by Administrative Law Judge Emanuel Poverstein of Albuquerque. They contend that Judge Poverstein made his decision, in each individual case, based on factors other than disability. Their contention is that Judge Poverstein has a reputation for denying reconsideration requests of Hispanos and Blacks. They further contend that Judge Poverstein goes beyond what they think is his legal authority to deny their appeals based on their ethnic background.

I have never met Judge Poverstein, and would tend to think that if the allegations made by my clients are true, he is overstepping his authority by denying appeals based on ethnicity.

I would like for this committee to investigate this problem and take appropriate measures to correct it.

In another matter, related to disability determination, I have observed where Administrative Law Judges insist that a person under age 65 with no physical disability is considered able to work without giving consideration to their social disabilities.

In the case of females, and more specifically Hispanic females between ages 55-65, it seems that the law is discriminatory.

Many of these women have had very little or no education and the biggest part of their lives have had to work in the home bringing up children and doing other related house work. This has deprived them of the opportunity of getting the experience necessary to get jobs, not to mention an opportunity to get an education. In many cases, they are left widowed at a critical point in their lifetime, when the children are old enough to go out on their own. This adds another item to the list of requirements to obtain financial aid. I don't know how this problem can be corrected, however, I do know that it should be looked into.

In my experience as a Caseworker for many years, I have seen women degrade themselves by going to see a psychiatrist who will render them mentally ill, in order to fulfill a requirement of the state or federal government in order to stay alive.

Dealing with concerns on a daily basis with women inequalities, I feel it important and crucial to address the problem areas and hope that action will be taken during this hearing to improve Women Relations.

I would like to get a copy of the report on the conclusions of this committee hearing if at all possible.

Thank you very much.

Respectfully submitted,



JUAN LUCERO
Aide to the Lieutenant Governor

JL/fl



City of Albuquerque

Office of Senior Affairs
714 7th S.W. Albuquerque, N.M. 87102 766-7056

October 7, 1983

Jeff Bingaman
United States Senator
231 Washington Ave.
Santa Fe, N. M. 87501

Dear Senator Bingaman:

Background:

In 1980 Congress passed legislation to tighten the Social Security disability review process. Concerned that the government was losing money by paying out benefits to ineligible claimants, Congress ordered the Social Security Administration to begin reviewing all non-permanently disabled on disability once every three years. President Reagan, in his effort to cut federal spending, began the process nine months early.

Critics, including the General Accounting Office, have charged that thousands of legitimately disabled beneficiaries have been thrown out the door. This speeded up process has resulted in a multitude of problems for those receiving Social Security Disability Insurance.

Problems:

Specific problem areas include:

1. No personal review process. Many persons up for review did not understand the process or learned about it only after a decision had been made to cut off benefits.
2. Evidentiary hearings were not held. Recipients were being cut from rolls before they had exhausted their appeals; the last being before an administrative law judge.
3. Adequate medical information was not obtained before a determination was made. Payments were terminated before the appeals process was completed.

SENATOR BINGAMAN
 SANTA FE, N.M.
 OCT 12 AM 11:30

4. Beneficiaries did not receive reasonable notice and information with respect to the time and place of consideration and opportunities afforded to introduce evidence and be represented by Counsel.

Not only were the above problems encountered but, additionally, the following problems occurred:

SSA failure to consider the combined effect of all impairment where it does not find any one of the impairments to be severe.

SSA's failure to consider vocational factors when assessing severity.

SSA's failure to consider the effects of pain in assessing whether a person can perform substantial gainful employment.

SSA's refusal to follow decisions of the circuit of appeals, instead issuing rulings of non-aquiescence or simply ignoring court orders.

Case example:

Mrs. W. is terminally ill with cancer. It started as breast cancer but has progressed to her spine. Since then Mrs. W. has suffered several spinal fractures. Aside from the bone cancer, she is also suffering from glaucoma.

Mrs. W. went on disability at age 50 in 1976; two years later she became eligible for Medicare. In 1980 her disability funds were terminated. To quote her, "When Reagan got elected everything was cut off." When she was terminated she went to legal services for help. Her first appeal took one year and was rejected at the administrative law judge level. Six months later, after another appeal, her disability was reinstated by the same judge.

During the appeals process, Mrs. W. lived on general assistance disability of \$135/month, \$35/mo. food stamps and subsidized housing. Mrs. W. was being treated at BCMC Hospital during the year and a half appeals process.

After being reinstated to SSDi at the rate of \$298/month another problem plagued her; she was asked to repay Medicare at the rate of \$20 per month.

Mrs. W. is currently living at home using homemaker service, but a new policy is being used by the Human Services Department under Title 20 which would affect the home care program for adults. What will Mrs. W. do? Her only alternative will be to enter a nursing home.

The multitude of problems I have presented paint a picture of the trauma elders have had to endure under this review process.

Recommendation:

The Albuquerque Office of Senior Affairs agrees basically with the provisions in HR-7093 (Public Law 97-455) which was passed in January, 1983. However, further changes are needed and we wish to recommend the following:

1. That SSA implement face-to-face interviews.
2. That SSA develop medical history dating back 12 months.
3. That pain and its effects on the client be carefully reviewed.
4. Special consideration be given to all.

Sincerely,



Ronald T. Montoya
Director
Office of Senior Affairs

10-5-83

Senator Bingaman:

I'm writing on behalf of my husband Edwin Brisco. Because of a severe stroke in 1980, it left him with limited use of his left hand which is his writing hand. There is nothing I wouldn't give to be able to show the evidence that SS has put this man thru. After 10 years of strokes, heart attack and surgeries, the Doc. that Ed was sent too in 15 min. diagnosed him alright to return to an 8 hr. a day job. A Doc. that's any Doc. at all cannot in that short of time till all that was and is still wrong with Edwin even tho in 1980, I took him to the E. R. Room at St. Mary's Hospital. He did not come in to even look at him and he was discharged with the explanation it was only his his nerves. Altho he was paralyzed on the left side. At that time, his brother and I took him to Vets Hospital in Albq., NM where the Doctor's there told me that one more stroke would have been fatal. In 1982 after the Doctors exam's he was taken off his SS income. From there Ed went on down hill. He lost all will to live. He has deteriorated until tho he is 61 he looks at least in his 90's even after the hearing that he had and the Judges decision we still could not get our SS income returned to us. We lost everything we had other than our home which I would have had to sell or borrow on. If I could have. April 24 of 83 they told us our checks would continue in about 3 to 4 weeks. They didn't resume our checks at that time. I continued going to the SS department inquiring and rec. the same answers, that they lost Ed's files and they couldn't do any thing at all about it. I went to SSI for myself and was put thru several hrs exams and tho had proof of ulcers, arthritis in my spine and other emotional problems, I was also refused getting a letter saying I could do simple but not stressful work. (there are no such jobs) We signed Ed up in hope that he could rec SSI until our SS was returned to us. They told him he would have to wait until the decision was made on SS. So that left us to live on \$144.02 disability from Firestone Tire and Rubber Co. a mo. and a few food stamps. I had to fight for to even get them. I'm sorry I'm hurt and angry over the treatment my husband and I both rec at that time. After coming to see you it took weeks before we finally got any action at all. Then the children,

twin boys 15 and I started to rec SS but Ed's wasn't forth coming. With the explantion the computer kept rejecting his file or something. All this time really took its toll on Ed. He deterioted untill I was afraid and still am for his life. He is constantly afraid and I am also that this will happen again. He told me that he could not live thru any of those things over again. No man worked harder all his life to support his family than this one did. Then his health broke and his source of income was all taken away. It left him more confused, bewildered and hurt to know this has happened. He wanted so much to be at this hearing Oct. 8, but they took his drivers license away from him a year ago and has not rec. one back tho he went thru the school and tests that they required him to take and passed i. To take any long trip tires him so much that he's afraid to try and make it down there. I hope and pray with all my heart that this action taken against Ed will not be repeated over again for his sake and thousands of others that are disabled and no income at all. I afraid the next time there won't be anyone left to return it too because after they lose the will as Ed did to live I need not tell you what will happen. As you know, the suci de in cases like these have increased untill I has shocked this whole nation unbearably. I took pills away from Ed one night, that would have killed him if I had not been very alert. God was with me. He just no longer cared. I could write a book on everything thats happened since 1982 on this SS but Thank you anyway for reading just a few. Please do something while there is still time for our D.A.V. mem and women. Sir where there is no hope there is no will. I need my husband very much.

Sincerely,

MRS. EDWIN J. BRISCO

SENATOR BINGAMAN
ALBUQUERQUE, N.M.

1983 OCT -7 PM 4:57
October 7, 1983

The Honorable Jeff Bingaman
United States Senator
United States Senate
Washington, D. C.

Dear Honorable Senator Bingaman:

I have written this letter to be used as testimony in the event that my illness prevents me from attending this hearing.

I wish to thank you and your committee for giving me the opportunity to express how this type harrassement has affected me and my family.

At the present the Social Security Administration has suspended my disability payments and I am appealing their decision. This is not the first time my disability benefits have been stopped. In Nineteen Seventy Three I was forced to contact a lawyer and go before one of their Administrative Law Judges, who at the time overturned their decision in my favor. I guess that fact, and the fact that my illness causes me to be under a doctor's constant care makes no difference to the Disability Determination Unit.

The fact that my records show how often I have to receive pain killing injections and the different pills I have been taking should be proof enough that I am not lying about the suffering I am going through. If they do not believe hospital and doctors records, then I do not know that else to present.

By denying me my benefits they have called me a liar and this has added one headache on top of another. It has caused me to get very depressed with longer and more severe pain. I had to be hospitalized in June, 1983, when they started re-investigating me again. I have also gotten very nervous and short with my family.

As far as having to be checked every three years by a Doctor from SS, in my case it is a waste of the taxpayers money. I suffer from Disabling Severe Migraine Headaches and pain does not show up on a x-ray, etc., so he either has to believe me or not. I do not think that in five minutes any doctor can make that kind of a decision. I find that this is also very unfair to that particular doctor if he is interested in making as impartial and unbiased decision as he can. I realize that this is the law, but the decision should be assessed on my day to day living and that is a matter of record as presented by the doctors that I have been consulting because of my illness.

Thank you very much.

Sincerely,

Adela R. Garcia

Adela R. Garcia

Box 3 Box 915, Las Lunas, New Mexico 87031

October 13, 1983

To: Senator Bingaman
From: Rodman D. Golding
Subject: Social Security

I have been on Social Security for over ten (10) years and have never been reviewed by Soc. Sec. in that time. I have made monthly and sometimes twice monthly visits to the VA med center for problems relating to my back, eyes, hand, and numerous other problems. I have not done any gainful work since I have been on Soc. Sec. or VA disability. Now the Soc. Sec. has reviewed my case and has denied by case on the grounds that I'm able to work at gainful employment. I have been reviewed by the VA in the last 4 months and they found me to be unemployable and to continue at 100% disability.

The doctor that Soc. Sec. sent me to was a doctor of Internal Medicine. I was seen at the onset of my pain in '73 by a Ortho doctor. I asked the D.D.U. if I could take a CT Scan X-ray for review by their doctor and was told they would take their own at a cost of over \$125.00. My X-ray at that time was only 2 months old. I feel that I was discriminated against by the Soc. Sec. and the D.D.U. because of my disability by the V.A. I do have ongoing appointments by doctors at the V.A. for neck and leg problems. I am unable to stand, walk or sit for any length of time and I have trouble with my eyes if I read to long at a time or work on letters or things that require close work. I feel that Soc. Sec. did not take in to account my worsening condition over the last 10 and more years. I do not feel I can do gainful work and would be cut out of all disability if I do anything. I would like this to be a record of the hearing held on Sat. Oct. 8, 1983.

Rodman D. Golding
1708 Luthy Place N.E.
Albuquerque, New Mexico 87112

Ph. 299-4385

MICHAEL MCCUTCHEN, M.D.

ORTHOPAEDIC SURGEON
HOSPITAL OF THE ARMY

500 WALTER S.E. - SUITE 200 - ALBUQUERQUE, NEW MEXICO 87102 - PHONE 243-5405

September 13, 1983

Disabled American Veterans
ATTN: J.C. Hernandez
500 Gold Ave, SW
Albuquerque, NM 87102

RE: GOLDING, Rodman D.
SSN 507-28-6529

Dear Mr. Hernandez:

Mr. Rodman D. Golding was seen and examined in the office on the 13th of September, 1983. He has been referred from the spinal clinic at the Veteran's Administration Medical Center.

CHIEF COMPLAINT: Low back and bilateral leg pain to the knees.

HISTORY: Patient is a 54 year old married male who was involved in car accident in 1953 with multiple injuries. In 1973 he underwent a lumbar laminectomy and disc excision at L4-5 for a left sided leg pain. He obtained approximately 3 months with relief then his symptoms returned. As of 1973 he was placed as totally disabled by the Social Security Department. In 1974 he was considered totally disabled by the Veterans Administration.

His current status is a standing tolerance of 5 minutes and a sitting tolerance of 15 minutes. He finds the only recombent position is in a lounge. He finds that any bending of his spine to increase his symptomatology. He finds that coughing and sneezing at times increases his symptoms, but he has had no difficulty with his bowel or bladder and no impotency.

He has allergies to codeine. He has multiple ongoing orthopaedic problems including ankle and wrist problems and he also is undergoing difficulty with bilateral varicose veins.

PHYSICAL EXAMINATION: This was limited to his spine. He entered the examination was an antalgic gait, a rigid spine with evidence of 2-3+ paravertebral muscle spasm present. His pelvis is level. He has diffuse tenderness over the lumbar spine. He can flex to 20° and extend his lumbar spine to 5°. Lateral bending and lateral rotation are restricted. Axial compression is negative. He has normal flexion of his cervical spine, but a decrease of only 15° of extension in the cervical spine. Lateral bending and lateral rotation are limited. He has absent ankle jerks bilaterally and only 1+ knee jerks. Normal upper extremity deep tendon reflexes.

September 13, 1983

TO: DAV, Attn: J.C. Hernandez

RE: GOLDING, Rodman D.

Page 2

He is right handed and has 55 lbs. of grip strength bilaterally, 18 lbs. of pinch strength bilaterally. Sitting, straight leg raising, Lasegue's and bowstring are negative on the right, but positive on the left at 40°. He has decreased sensation bilaterally in the S1 dermatome. He has slight left tibialis anterior motor-point tenderness.

Leg length and leg circumference are equal and he has marked varicosities in both legs from the ankle to the groin. There is no evidence of clonus or Babinski in the lower extremities.

RADIOGRAPHIC EXAMINATION: X-rays including a myelogram and CAT scan are reviewed and show peroneal fibrosis in the C4-5 motion segment of the lumbar spine. There are x-rays of the cervical spine that reveal the presence of multiple level cervical spondylosis. X-rays are augmented by flexion, extension laterals of the lumbar spine which show marked narrowing at the L4-5 and L5-S1 disc space without any appreciable motion and these segments show no evidence of segmental instability at L3-4.

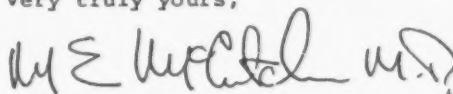
CLINICAL IMPRESSION: (1) MULTIPLE LEVEL CERVICAL SPONDYLOSIS
(2) TWO-LEVEL LUMBAR DEGENERATIVE DISC DISEASE

DISCUSSION: The patient's history and clinical findings are consistent and give evidence to support his complaints. At this time I feel the patient remains totally disabled and I am not sure that there is a job he could perform because of his limited standing and sitting capabilities.

At this point in time I do not feel the patient is a candidate for further surgical procedures.

I hope the above clarified the patient's current clinical condition. I remain,

Very truly yours,



MICHAEL E. MCCUTCHEON, M.D.

MEM/slm

We would like to thank Senator Bingaman and his staff for their concern on S.S. matters. Besides testimonies presented, it has also been a burden to the recipient as well as the rest of the family. I myself have been obligated to go through great expense getting other evaluations and reports plus attorney fees, and travel expenses.

Thank you,

Eliseo Martinez
P.O. Box 214
Santa Cruz, New Mexico
87567

October 8, 1983
Santa Fe

Statement

The testimony given at this hearing indicates that many disabled persons are being subjected to cruel and unusual punishment by an administration determined to save money but which denies a fair hearing to the client.

Sincerely,

William E. Mekeel

Leroy A. Romero
525-72-5779
P.O. Box 403
Ranchos de Taos
New Mexico 87557

To Whom It May Concern,

Since a request for a hearing has been granted and not having been satisfied with the results of the medical or physical exam; I have had one of my original doctors give me a more thorough and extensive medical or physical exam. For whom, but one of my original doctors, that put me on the disability condition that I am in, is better qualified to give you, Sirs, the best judgment of my physical condition than him, Dr. Michael Rothman here in Santa Fe, New Mexico. 440 St. Michaels Dr. 988-9783

Yes, Sir, I have come a long ways, from when the priest gave me my last rights, (4 Times) and nine months later in the hospital, thanks to God, my doctors, my wonderful family and of course my will power to live.

No, Sir, you have no idea of the depression, that this has caused me, the mental anguish. For where in Northern New Mexico, can I find a job that the Social Security Department has set guide lines for me and those like me or worse. Mining is the largest employment here in Taos County, and the unemployment rate is close to 20%.

Sir, my mind is in excellent condition. But my physical condition is shot. I had a total of eighty-seven multiple fractures throughout my body, mainly on my ankles and feet, and also my elbows. Arthritis has set on the majority of my movable joints. Most seriously on my ankles and feet, and my elbows. I use a walking cane. Also my local doctor, Dr. Ray Deveaux prescribed pills for my arthritis (Indocin), (Tagamet) for my ulcers, and for my headaches, he prescribed (Fiorinal). One year and a half ago, due to my disability to walk for a long distance, I was forced to stay in my 69 Ford. I was coming from Ojo Caliente Mineral Spring which I go to as often as I can for my arthritis, my car stalled and stayed at the Gorge Bridge over night. Temperature dropped to 39° below zero. For this, was in February the 7th of 1982. My circulation on my feet is very bad. I got frost-bite on my toes. I was in the hospital for 10 days here in Taos. Some of my toes are still disfigured, and in pain constantly, especially in cold weather.

Yes, Sir, I would want to work, but where in Taos, can I get a job that will pay me as much as Social Security does and still exist in my physical condition.

I have completed two years in college here at the Branch of New Mexico Highlands University, going part-time on the Rehabilitation Program. I am majoring in social services and Spanish. I pray that with your help, I can continue on my major at Las Vegas. I am catholic sir. I am not a religious fanatic, but, I pray alot. Again, Sir, I ask you for your compassion and understanding on this serious matter, that will affect me the rest of my days. I believe in true American justice and have alot of faith in your positive answer.

Thank you,
Sir

Leroy A. Romero

A-12 ALBUQUERQUE JOURNAL Wednesday, September 21, 1983

(Leroy's copy)

COURT CITES ILLEGAL COERCION

WASHINGTON (AP)--The U.S. Court of Appeals ruled Tuesday that Reagan administration used illegal coercion last year when it tried to persuade four million aged, blind and disabled welfare recipients to disclose how much they are worth.

The administration hinted that Supplemental Security Income benefits might be denied if recipients refused to authorize government access to their confidential tax returns.

The appeals court said federal law might permit the Internal Revenue Service to disclose the contents of an individual's tax return to another government agency if the individual freely gives his consent.

But the court, in an opinion by Judge Abner Mikva, said a form mailed to the four million recipients of SSI seeking access to the information "makes a mockery of the consent requirement."

"The form itself contained poorly veiled threats the recipients' benefits would be terminated if they failed to sign the forms," Mikva wrote. "The language of the form was thus likely to coerce individuals, who depend on Social Security for their subsistence, into giving up their right to confidentiality."

The court ordered the IRS not to turn the tax returns over to the Social Security Administration, an arm of the Department of Health and Human Services.

Mikva said that if the IRS violates the ruling, the government could be hit with damage suits by SSI recipients. "These forms are thus rendered useless" to the Social Security Administration, he added.

Leroy's Review
S.S. 52-5071

DIPLOMATE AMERICAN BOARD OF ORTHOPAEDIC SURGERY
410 ST. MICHAEL'S DRIVE
SANTA FE, NEW MEXICO 87501

Orthopaedic evaluation: Leroy A. Romero

September 19, 1983

This 47 year old man was in a severe automobile accident in 1972 in which he sustained severe fractures of his right elbow, both femurs and both ankles and feet. He was hospitalized in Albuquerque for a considerable length of time and was gradually rehabilitated, however he does have significant physical impairments as a residual from the accident.

The problem with the right elbow is as follows: he has stiffness and loss of strength. Examination of the elbow reveals that he has quite a bit of limitation of motion. The range is from 40° of flexion to 120° of flexion. He has also lost 50% motion in pronation-supination. That means his ability to rotate his forearm and wrist. X-ray of the right elbow indicates that there is deformity of the ulna bone just distal to the elbow and there is deformity of the articular surfaces of the joint itself.

The problem with his feet and ankles revolve about stiffness and pain all the time while walking and very often while even sitting. Range of motion of the left ankle is from 5° of dorsiflexion to 20° of plantar flexion. Range of motion of the right ankle is 5° of dorsiflexion to 15° of plantar flexion. Both of these arcs of motion are significantly limited. He walks very flatfooted, limping on both feet because of pain with each step. X-ray of the left foot indicates that there was a crush injury to the heel bone or the calcaneus with severe arthritis of the subtalar joint which is the joint underneath the ankle between the ankle bone and the heel bone. There is also arthritis of the talonavicular joint and the talo cuboid and the calcaneal cuboid joints. There is deformity of the tibiotalar joint which is the ankle joint on the lateral view with flattening of the dome of the talus and the distal tibia. X-ray of the right ankle and foot indicate old fractures of the ankle joint involving both sides of the ankle, both the lateral malleolus and the medial malleolus with appearance of traumatic arthritis of the ankle joint itself and a huge bone spur at the posterior aspect of the ankle overlying the posterior malleolus. Further physical examination of the ankle and feet reveal tenderness about both ankles and both heels. The patient is not able to heel walk or toe walk because of these problems.

Both knees crack alot and he has pain in both knees, the left greater than the right, and the pain is also increased with change in weather and especially cold weather. The left knee demonstrates a range of motion of full extension to 110° of flexion, the right knee 0 to 110° of flexion. Normal flexion of the knee is at least 120° to 125°. Examination of each knee does reveal patella femoral crepitation and crackling in the joint. The ligaments are stable. X-rays of the knees and femurs indicate that there is a healed supracondylar fracture above the knee of the right femur with good alignment on the AP view but considerable deformity on the lateral view. X-ray of the left femur indicates a healed fracture of the distal 1/3 of the shaft of the femur with slight deformity.

He has no symptoms in his hips and he has full range of motion of both hips.

He also has low back pain which comes and goes and is related to any type of physical exertion. He is almost able to touch his toes but when he goes to get up he has a great deal of stiffness and some pain with spasm in the paraspinal muscles. I believe that the back problem is secondary to his lower extremity problems because of the way he has to walk in a flatfooted fashion. His overall activity level indicates that he cannot walk more than 2 blocks, getting in and out of a car is difficult on a repetitive basis and sitting for more than 2 or 3 hours at a time can also cause a problem with his back and stiffness of the joints such as the knees and ankles.

This patient does have a significant amount of physical impairment, especially of both lower extremities and right arm. In order to be productive in society it might be very wise to consider continuing his education since he has already had 2 years of college and might be able to get into a field where he can balance out his physical activities and the amount of time he has to be either on his feet or sitting down.

It should also be noted that he did have frostbite of his left foot about 14 years ago and he still has residual numbness of the toes on the left foot.

Michael A. [Signature]

Roberto M. Roybal
P. O. Box 214
Pecos, New Mexico 87552

Senator J. Bingaman
United States Senate
Committee on Governmental Affairs

Dear sir:

This letter is to introduce myself.

My name is Roberto M. Roybal and I am involved with Senior Citizens affairs in San Miguel County and am chairman of the advisory board at the Senior Citizens Center in Pecos, vice-chairman of the advisory council for the Mora-San Miguel Senior Citizens Inc. I am also a member of the Community Action Board representing the poor in San Miguel, Mora and Colfax counties, with the Sierras Y Llanos Agency.

I am also a member of the Senior Coalition Board of Directors for District 2.

Recently I joined a group of volunteers as an ambudsman for the state Agency of Aging to visit nursing facilities and boarding houses etc, and have worked as a vista for one and a half years.

The reason for my getting so involved in senior citizens affairs is to help make a better and happier living for older Americans.

Sincerely,

Roberto M. Roybal
Roberto M. Roybal

Roberto M. Roybal
P. O. Box 218
Pecos, New Mexico 87552

Senator J. Bingaman
United States Senate
Committee on Governmental Affairs

Dear sir:

Thank-you for the invitation to testify at the hearing October 8, 1983 in Santa Fe on Disability Social Security

I am unable to present my testimony. Due to a cold, my voice is impaired. However, I will present some of my views to you here in writing.

Medicare as a Federal Health Insurance program for people 65 or older and certain disabled people:

Most people are aware that Social Security programs are in trouble financially. Disability retirement was made available to many people under 65 years of age and people who never contributed to the program. Some never paid Social Security and are getting Social Security. The feeling is that Social Security benefits should be only for those who contributed.

The present rules and regulations of Social Security do not encourage people to work and contribute to Social Security Disability Medical Insurance. Young people who are working and are contributing are under the impression that there will not be a Social Security program for them when they reach 65 years of age.

We are all wondering about the high cost of medical care and what the federal government is going to do about it.

Thank-you.

Sincerely,

Roberto M. Roybal
Roberto M. Roybal.

September 21, 1983

Senator Jeff Bingaman
Suite 201, U.S. Federal Bldg.
281 East Gregg
Las Alamos, New Mexico 88001

Dear Sir:

This letter is in support of the hearings you are conducting on the Social Security Disability review program.

I do not know the methods used by the Disability Determination Unit to review and determine the level of disability in each case. After receiving the initial letter of determination dated 29 December 1982, which stated I was able to engage in "substantial gainful activity" I carefully read the reports listed, which were used to make the determination. It struck me at that time that some of the reports used did not pertain to the disability claimed originally. It was also stated that I could return to my usual job as Aviation Weapons Control Supervisor. This was my usual job 13 or 14 years ago in the Navy and was assumed to be of a light job by the D.D.U.

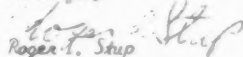
To me it appears that those who make these determinations are either not qualified or are not taking the care required to make such decisions. In my case since the letter is not signed no one has to admit to a bad decision. For those reasons I requested a face to face review. At that interview I submitted a statement of facts as I knew them and tried to bring attention to only those documents pertaining to my disability claim. Once again the decision was made that I was able to do "substantial gainful activity". However this time it was acknowledged that I was "severely impaired" but I could do a civilian related job such as Aviation Maintenance Supervisor. At this point I would like to state that my regular job was Instrument Repairman for Chino Mines.

Here then, is just a couple of problems in the system of review.

1. Lack of weight given to medical reports and attending physicians signed statements pertaining to the actual disability claimed.
2. Lack of knowledge of the mental and physical health and stamina required to work in the skilled labor force.

I will conclude this letter with a suggestion that all personnel employed in the D.D.U. should have at least 3 credit hours of courtesy and diplomacy in every day human relations.

Thank you,


Roger L. Strup
4731 Inwood Lane
Silver City, New Mexico 88061

Sharon Willis
4901 San Mateo Ln. N.E. #12
Albuquerque, New Mexico 87109

To whom it may concern:

I am a 31 year old female who has had a kidney transplant, 6 years ago last August. Although there is no problem with the kidney, medications have caused other problems.

The Cytoxan I have to take for my kidney has caused a number of things:

- 1) Fungal infections on toenails which have to be removed.
(The whole nail.)
- 2) Ovarian failure. I have hot sweats. I am always wet which causes problems going outside in cold weather. I was told by Social Security that this could be controlled by medication. (They are not and have never been.)
- 3) My next fear will be a hysterectomy because of cancer.
- 4) Shingles, or herpes Zoster, are almost always present on some part of my body. These are very painful.
- 5) I have glaucoma and need to have this treated. S.S. decided that my vision and hearing are not severe enough. Do I have to go blind before they can help?
- 6) Bursitis is a never ending pain. There are days I cannot hold anything in my hands. S.S. has decided that this does not cause any kind of problems. I don't know how they have come to that conclusion, this condition has not even been evaluated in several years.

I cannot get insurance for myself. I can't blame them but what am I to do to get any kind of help.

I do not want to change my doctors because I have faith in them. They know me well. Why should I have to? Most people have a family doctor, why should I have just any doctor who is available and knows nothing? It is very hard to explain 7 years of back history before they do anything.

The problem is I do not fit S.S. written laws. I don't know what to do at this point.

Thank you,

Sharon Willis

October 14, 1983

Honorable Senator Jeff Bingaman

My name is Rupert Joe Zamora and I am writing to you to ask you for your help on my Social Security disability claim. My S.S. number is 525-76-9678. I have been disabled since July 1973, but in July of 1981 I was informed that I was no longer eligible for my benefits. I am a very sick man and I have been diagnosed as having Reiters Syndrome through out my whole body. I have a real bad condition of my lower back and it is very painful. My toes and heels are very bad (also swelling of my joints.) My pain is so bad I can't stand up for a long time or sit. I also have a mental problem (I am very depressed, I have severe nerves and irritable problem.) I have gone to two hearings since July of 1981 and they have been unfavorable decisions on my claims. I don't approve of the decisions. I also asked for a request review and I was denied.

I feel that the decisions on my Social Security disability were not fair because I have many doctors' evidence of my health, mental and physical disability, that are favorable to me.

I feel totally and permanently disabled and I also feel I can not engage in any type of employment at this time. I have not been able to do any kind of work since July 1973.

I live on an income of \$233.00 a month from H.S.S. We don't even have money for our utilities. All my papers are at the Disability Determination Unit here in Albuquerque, New Mexico.

I have made a claim for my Social Security disability since June 7, 1983 and up to this day I have not heard a word on my claim.

Well Senator Jeff Bingaman, excuse my bad writing, and I would like to thank you for any help you can give me and my family.

Sincerely your,

Rupert Joe and Mary Lou Zamora

4916 5th Street, N.W.
Albuquerque, New Mexico 87107

S.S. 525-76-9678

Attachment:

I am speaking in regard to Rupert Zamora. I have known Rupert for 10 years and was quite surprised when he told me that his benefits had been terminated. Knowing Rupert, I know that he is unable to work and this has caused a big hardship for him and his family. They are presently losing their home. I have seen doctors reports where they have classified him as totally unemployable. His case is now before the Disability Determinations Board and has been for 4 months. He has also applied for Social Security Supplements which he has not heard from.

Ralph Gnego
Commander
D.A.V.

October 6, 1983

Senator Jeff Bingaman
 United States Senate
 Committee on Governmental Affairs
 Washington, D. C. 20510

Dear Senator Bingaman:

I am enclosing a list of my service connected disabilities and my non-service connected disabilities and a short description of how some of them affect me.

Social Security informed me in May, 1983 that my disability benefits would be stopped. I immediately appealed that decision and on approximately August 28, 1983 your Roswell office received a telecopied message from the Social Security Office in Dallas Texas, that medical evidence was reviewed and they found that my condition is still serious enough to be disabling and that my payments should continue.

September 26, 1983 I received a notice that I am to report for a special medical examination at the New Mexico Rehabilitation Center here in Roswell on Friday, October 7, 1983. This means that they have reversed their decision. How can they do this? It seems to me that the Social Security Adm. is like an animal of prey, choosing the weak and sick to stalk. Shouldn't there be some sort of law or regulation to protect those of us who can't fight back?

I served my country during the Korean war in 5 battles. I heeded my country's call, did my part to protect the freedoms and government of this country. Now I am disabled as a result and endure pain and hardship, and now I need my country's help.

Please enter my testimony at the Senate hearing but note that I wish to remain anonymous. Thank you.

SERVICE CONNECTED DISABILITIES:

1. Loss of Hearing
2. Trauma of the brain with subsequent neuroses, constant depression and anger severe enough to require monthly psychiatric counseling. This trauma also causes black-outs, dizzy spells, 2 occasions of blindness, headaches and pressure. I take 3 different medicines-one daily and the other frequently.
3. Ringing in my ears (constant) from a concussion sustained in 1951.
4. Frostbite of both legs and feet with a resulting impairment to the blood vessels. This condition is aggravated by cold and prevents me from standing any length of time.
5. Compound jaw fracture.

NON-SERVICE CONNECTED DISABILITIES:

1. Diabetes Mellitus. I am taking 2 shots of Insulin daily and I am subject to insulin reactions frequently.
2. Herniated lumbar disc which is considered totally disabling by Dr. Leed of Cleveland, Ohio.
3. Cancer of the colon within the last year with subsequent expensive tests required every 3 months.

I also want to mention that since being discharged in 1952 and up until 1975 I have held approximately 62 different jobs.